
UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

2.

THE SOUTHERN PACIFIC COMPANY, a Corporation,
 THE SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation,
 HOMER S. KING, Trustee, JAMES K. WILSON, Trustee,
 THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation,
 THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation,
 THE KERN TRADING & OIL COMPANY, a Corporation,
 Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
 STATES OF AMERICA,

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
 NORTHERN DIVISION.

VOLUME VI

Filed

MAR 23 1917

F. D. Monckton



anticlinal might rise or it might dip under beyond the reach of any drilling; by personal investigation I do not mean that I went out over the land in every instance; I went over some of the land in the Elk Hills; I think that report was [2816] put in before I went over them; it was put in about the time that I asked for the withdrawals; about 1900.

I know a man by the name of John Jean, and one by the name of L. G. Sarnow; they worked under me for the Southern Pacific Company, as oil well drillers; I do not remember Mr. Jean coming to me, as you say, with a sample of oil sand in 1899; he may have, but I do not remember any particular instance of it; I do not remember making a trip by train in company with Mr. Jean and Mr. Sarnow to Buttonwillow, from Bakersfield, in December, 1899; I do not remember going out that way, because it would be a good deal handier to go from my camp right over there; I may have made the trip as you state, but I have no recollection of it; I did not state to anyone that those lands in section 33, of 30-24 had been surveyed by the Government but had not been officially accepted or approved, because I don't think I knew anything about it; I did not explain to them that because I wanted to justify the location with reference to petroleum lands which would fall within indemnity limits of the grant of the Southern Pacific Company; I would not say such a thing as that; that is not true; I may have made out those notices myself in December, 1899, I don't know; the notices will show for themselves; I will not say under oath

that I did not put up monuments there, but I have no recollection of it; it would not be necessary; if the notices so show, it is true that I placed on them the names of J. B. Treadwell, May Treadwell, E. D. Treadwell, C. C. Boynton, F. Boynton, W. L. Hardison, Guy Hardison and R. S. Aston, who were all, except Aston, related to me in some way.

When Mr. Lewers asked me how my name came to be on these location notices, I stated that several drillers had been over and had an idea it was oil land and suggested that I join with them in making the locations; that I said "All right; go ahead"; that they made the locations and then I went over afterwards to see, and my conclusion was that I did not want it; I be- [2817] lieved that to be the facts of the case; that those notices were written out by me and posted by them, and not only that, but others; the map showed at that time that the lands were unsurveyed; I believed that the map correctly showed the state of those lands; they might have been officially surveyed, but not approved; section 33 is an odd section; I knew that if it was not mineral land and no one had filed on it, the railroad company would have a right to select it, provided it fell within none of the exceptions contained in the grant; I may have explained that to Jean and Sarnow, I don't know; I made a location for petroleum on Section 33, in December, 1899, upon an odd numbered section, which, if it fell within none of the exceptions, might be selected by the railroad company as agricultural land; I do not remember any-

thing about finding that N. C. Farnham, H. A. Blodget, T. J. Packard, Waggy, Roper and others had put up location notices on that section December 14th, as you ask; I did not know that Mr. Farnham had filed his location notice December 15th on that section; I did not antedate my location; Mr. Farnham did not say that I did so; I did not have any conversation with others about it.

The location notice just mentioned, and found in the county records of Kern County, California, reads as follows: "Notice of location of the northwest 33 placer mining claim, embracing the northwest quarter of said Section 33. Location December 13, 1899, by J. B. Treadwell, May Treadwell, E. D. Treadwell, C. C. Boynton, F. Boynton, W. L. Hardison, Guy Hardison, and R. S. Aston. Recorded December 19, 1899, in Book 18 of Mining Records, at page 402, Records of Kern County, California."

That location having been made in the month of December, 1899, I was entitled to expect that to hold good for one year, providing the proper assessment labor was performed upon it; at that time I evidently believed that it was mineral land; I have often been disappointed in locations; I afterwards advised Mr. [2818] Sarnow and Mr. Jean not to do any further assessment work on that land, that I did not consider it good mineral land; I did not do so because it was railroad land; I do not know that I had an argument with Mr. Jean, who thought as I did when the location was made, that that land was surveyed but not officially accepted, and there-

fore that those locations would take priority of the selection by the railroad company; I may have said that; I don't know as I did; I did not advise the railroad company to select that land under an agricultural grant; I did not locate for the purpose of keeping other locators off so that the railroad could get it; I would not take that land as a gift, today; not to drill a well on it.

Referring to a "notice of location on the southwest quarter of 36 placer mining claim, embracing the southwest quarter of said section 33, located December 13, 1899, by L. G. Sarnow, F. J. Sarnow, J. E. Wible, D. Burkhalter, Barbara Sarnow and Grant Dewlaney, recorded December 19, 1899, in Book 18 of Mining Records, at page 402, Records of Kern County, California", as you read it, I suppose that was made at the same time that we made it upon the northwest quarter.

Reading notice of location of the southeast of 36 placer mining claim, embracing the southeast quarter of said Section 33, reading as follows: "Located December 13, 1899, by C. H. Quincy, Samuel Sweitzer, D. Burkhalter, John Jean, L. G. Sarnow, F. J. Sarnow, May Sarnow and Barbara Sarnow, recorded December 19, 1899, in Book 18 of Mining Records, at page 402, Records of Kern County, California," I think very likely that location was made at that time; I have no recollection of the thing.

You call my attention to another "notice of location, of the northeast 36 placer mining claim, embracing the northeast quarter of said Section 33,

located December 13, 1899, by Grant Dewlaney, J. B. Treadwell, W. L. Hardison, Guy L. Hardison, E. D. [2819] Treadwell, D. Burkhalter, C. C. Boynton, and L. G. Sarnow, recorded December 19, 1899, in Book 18 of Mining Records, at page 403, Records of Kern County, California''; I suppose that was made on the date of the location; I expect it was made at the same time.

I do not know who J. E. Wible is; there are several Wibles in Bakersfield; one is president of the bank, and there are two brothers who had a laundry there; J. Burkhalter is superintendent of the Southern Pacific, with headquarters at Bakersfield; he was known to me at that time, but was not associated with me in business with the Southern Pacific Company; we were employees of the Southern Pacific at the same time, however; Samuel Sweitzer was a friend of L. G. Sarnow; I do not know who C. H. Quincy was; I do not know whether he was a friend of either Jean or Sarnow; Mr. Dewlaney was a man working in Summerland, a friend of mine, a friend of Sarnow's, and all; I do not know by whom his name was suggested; my wife's name, my son-in-law's name, my nephew, and son-in-law's brother were all suggested by me.

Mr. Mills: Mr. Lewers, I am going to offer, at this point in the cross-examination, a certified copy, exemplified under the seal of the General Land Office, of List No. 86, of lands selected by the Southern Pacific Railroad Company within the indemnity limits, filed October 29, 1900, at the Visalia Land

Office, and I will ask that the same be incorporated into the record.

The Certified copy of List No. 86, Lands selected by the Southern Pacific Railroad Company, last referred to and offered in evidence is marked "Plaintiff's Exhibit 5Y-L.L."; and is as follows:

"4-207

B. DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE,

MEL Washington, D. C., September 27, 1912.

I hereby certify that the annexed copy of List No. 86, lands selected by the Southern Pacific Railroad Company, Visalia, California, is a true and literal exemplification from the records in this office.

[2820]

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

Fred Dennett,

Commissioner of the General Land Office.

(Seal):

UNITED STATES

GENERAL LAND OFFICE)

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Oct. 30/148736

UNITED STATES LAND OFFICE

Visalia, California,

Oct. 29, 1900.

List No. 86.

LANDS SELECTED

BY THE

SOUTHERN PACIFIC RAILROAD COMPANY,

Indemnity Limits. Posted Jan. 6, 1901.

E.G.M.

Filed Oct. 29, 1900.

Geo. W. Stewart, Register.

2 L 116

— of Base Line and — of —Principal Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

	No of Section	No of Town.	No of Range.
PART OF SECTION.			

AREA.

Acres. 100 REMARKS.

F-2-

Br & R

[2821]

G L 90 (10-30-95-250)

(Old G 153)

Office of the Southern Pacific Railroad Company.)

)

San Francisco, California.)

I, Joseph L. Will cutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that JEROME MADDEN was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the tenth (10th) day of May, A. D., 1876, and that since that time he has been continuously,

and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Southern Pacific Railroad Company, the 27th day of October, A. D. 1900.

(SEAL) Joseph L. Willcutt,
Secretary of the Southern Pacific
Railroad Company.

2L 116 Br & R

— of Base Line and — of — Principal Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

	No. of	No. of	No. of
PART OF SECTION	Section	Town.	Range.
AREA			

Acres 100 REMARKS

[2822]

3

LIST OF LANDS
IN THE

Visalia Land District, California,
SELECTED BY THE
SOUTHERN PACIFIC RAILROAD COMPANY,
OF CALIFORNIA.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri

and Arkansas to the Pacific Coast," and the further Act approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the joint Resolution of Congress, approved June 28, 1870, concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the Railroad and Telegraph of said Company; being in part for the Sixth (6th) section (Twenty (20) miles) of the same, commencing at [2823] Lerdo ——— and ending at Summer ——— which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:————

Jerome Madden,

Land Agent of the Southern Pacific
Railroad Company.

(1-15-00-250)

F-3-

RAILROAD LIST

South of Base Line and East of Mount Diablo Principal Meridian.

List of Selections made at Visalia, California, upon this Indemnity List No. 86.

NO. PART OF SECTION	No. of Section	No. of Town	No. of Range	AREA Acres 100	Fees of Register and Receiver	REMARKS
All	29	30 S.	24 E.	640.00		
E. $\frac{1}{2}$	31	"	"	320.00		
E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	31	"	"	80.00		
E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	31	"	"	80.00		
Frac. S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	31	"	"	41.23		
Frac. S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	31	"	"	41.30		
Frac. N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	31	"	"	41.38	Suppl Claim	
Frac. S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	31	"	"	41.46	List 89	
E. $\frac{1}{2}$	33	"	"	320.00		
W. $\frac{1}{2}$	33	"	"	320.00		
Total				1925.37		\$26.00

[2824]

F-4-

2 L 116

South of Base Line and East of Mount Diablo Principal Meridian.

Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	No. of Section	No. of Town	No. of Range	Area Acres. 100	Remarks
All	29	22 S.	23 E.	640.00	
E. $\frac{1}{2}$	31	"	"	320.00	
E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	31	"	"	80.00	
E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	31	"	"	80.00	
Lot 1	31	"	"	35.12	
Lot 8	9	24 S.	22 E.	48.00	
Lot 7	9	"	"	47.45	
Lot 2	31	22 S.	23 E.	35.28	
E. $\frac{1}{2}$	19	"	"	320.00	
W. $\frac{1}{2}$	33	"	"	320.00	
Total				1925.85	

Meridian

F-5-

(9-20-95-250

G L 92

5-

Br & r

Old G. 111.)

STATE OF CALIFORNIA—City and County of
San Francisco—ss.

I, JEROME MADDEN, being duly sworn, depose any say: that I am the Land Agent of the Southern Pacific Railroad Company, that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said Company from Lerdo to Sumner for which a grant of lands was made by the Acts of Congress approved July 27, 1866, [2825] July 25, 1868, and June 28, 1870, as aforesaid, that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands; and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, Indemnity Belt, on each side of the line of route for a continuous distance of Twenty (20) miles, being for the sixth (6th) section of said road, starting from a point in N. E. $\frac{1}{4}$ Sec. 9, T. 28 S., R. 26 E., M. D. B. & M., and ending at a point in N. E. $\frac{1}{4}$, Sec. 5 T. 30 S., R. 29 E., M. D. B. & M. and that the specific losses for which Indemnity is claimed are truly set forth and described in

said list, and that said losses have not heretofore been indemnified in any manner.

Jerome Madden. (SEAL)

Sworn to and subscribed before me this twenty-seventh (27th) day of October, 1900. Witness my hand and Notarial Seal.

(SEAL) E. B. Ryan.

Notary Public in and for the City and County of San Francisco, in the State of California.

-5-

-5-

Meridian UNITED STATES LAND OFFICE,)

)

Visalia, Cal., Oct. 29, 1900.)

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by JEROME MADDEN, [2826] the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, Indemnity Belt, on each side, and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed

as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows as assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1854, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office, to Registers and Receivers of the United States Land Offices; and that the said Company have paid to the undersigned, the Receiver, the full sum of Twenty-six (\$26.00) Dollars, in full payment and discharge of said fees.

Geo. W. Stewart, Register.

O. Scribner, Receiver.

Meridian

(2-11-97-200)

F-6-

2.L.27

Br & r

1900

San Francisco, Cal., October 27th.

The Southern Pacific Railroad Company, offers to ——— pay ——— under protest the expense of surveying the lands selected in the within list, because it claims to [2827] be exempt from such payment by provisions of the grant of lands to it by Congress.

Jerome Madden,

Land Agent, Southern Pacific R. R. Co.

UNITED STATES SURVEYOR-GENERAL'S
OFFICE,

San Francisco, California.

—————189.

I, ————— Surveyor General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit ———, dated ———, to the credit of the United States, showing that the sum of \$———— has been deposited as cost of survey, and \$———— for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey,—————

OFFICE work, ———\$

IN TESTIMONY WHEREOF, I have hereunto set
my hand and Official Seal.

—————....

SURVEYOR-GENERAL.

Meridian

F-7-

STATE OF CALIFORNIA—City and County of
San Francisco—ss.

Jerome Madden, being duly sworn, deposes and says that he is now and has been continuously since the 10th day [2828] May, 1876, the Land Agent of the Southern Pacific Railroad Company, that he has caused the lands selected in said Company's Visa-

lia List No. 86, indemnity limits, to be carefully examined by the agents and employes of said Company as to their mineral or agricultural character, and that to the best of his knowledge and belief, none of the lands returned in said list are mineral lands.

Jerome Madden,

Subscribed and sworn to before me this 27th day of
October, 1900.

E. B. Ryan,

Notary Public in and for the City and County of
San Francisco, State of California.”

Mr. Mills—I shall also offer, at this time, a certified copy, duly authenticated and exemplified under the seal of the General Land Office, of approved clear list Supplemental No. 89, covering the same lands, which I shall ask to have incorporated into the record as it stands.

The certified copy of approved clear list, Supplemental No. 89, Southern Pacific Railroad, last referred to and offered in evidence is marked “Plaintiff’s Exhibit No. 5 Z—LL”, and is as follows:

“4-207

B. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., September 27, 1912.

I hereby certify that the annexed copy of approved clear list Supplemental No. 89, Southern Pacific Railroad, is [2829] a true and literal exemplification from the said list in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

Fred Dennett,

Commissioner of the General Land Office.

(SEAL)

UNITED STATES
GENERAL LAND
OFFICE)

Suppl. List No. 89

Southern Pacific Railroad Lands,

Indemnity Limits,

Visalia Land District,

California.

Surveys paid	Jany 18/02 to R & R to post &
Cf D 737-F. C. L.	publish under Dept. Circ.
June 7/02 copy to R & R	July 9/94 (19 L. D. 21
F. C. L.	F. C. L.

April 11/02-63765 R & R transmit evidence
June 20/02-106835 R & of publication & post-
d R. ing. F.C.L.

Ack- receipt. F.C.L. Approved May 23, 1902.

Patent 111 issued May 28, 1902.

Recorded Vol. 25 pp 415 to 418 incl.

Posted June 17, 1902

G. E. F.

Form 1-National Banks

No. 747 THE CENTRAL NATIONAL BANK
OF WASHINGTON CITY,

Washington, D. C., May 20, 1902.

I certify that Southern Pacific R. R. Co. has this day deposited to the Credit of the TREASURER OF THE UNITED [2830] STATES One hundred and thirty nine ———39 Dollars, on account of Cost of Survey (field & office work) of 1925.37 acres selected in Visalia list 86 and put by G. L. O. into Clear List Supplemental 89 for which I have signed triplicate receipts.

field \$129.77

M. B. Ruff, Cashier.

\$139.39 office 9.62

139.39

DUPLICATE The depositor will send this day by the first mail to the Commissioner of Patents, if the deposit is for patent Fees; to the Commissioner of Internal Revenue, if for Internal Revenue; to the Commissioner of the General Land Office, if for Sales of Public Lands; to the Surveyor General, if for Surveys of Public Lands; to the Treasurer U. S., if for Semiannual duty or Transfer of Funds.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

May 22, 1902.

WHEREAS, by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870,

‘to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast’’, and to secure to the Government the use of the same for Postal, Military, and to other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of said state. to construct a Railroad and Telegraph Line under certain conditions and stipulations as expressed in said Act, from the City of San [2831] Francisco, to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said Company, ‘every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, granted or otherwise appropriated by the United States, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed,’ and —————

WHEREAS, it is further provided by said Act, that ‘whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said Company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of

said alternate sections, and not included in the reserved numbers, and _____

WHEREAS, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said railroad and telegraph from San Jose to Tres Pinos and from Alcalde to Mojave, together comprising two hundred [2832] and fifty-two miles and four hundred and seventy-nine thousandths of a mile, has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the President, and _____

WHEREAS, it is shown by certain papers filed in the office of the Commissioner of the General Land Office by the duly authorized attorney of the Southern Pacific Railroad Company with his letter of April 30, 1902, that the said Southern Pacific Railroad Company is the successor by consolidation of the Southern Pacific Railroad Company of California, and _____

WHEREAS, the following tracts have been selected under the Acts aforesaid, by the duly authorized land agent of the said Southern Pacific Railroad Company of California, or its successor, as shown by his original lists of selections approved by the local officers, and now on file in the General Land Office, and _____

WHEREAS, the said tracts of land lie coterminous to the constructed line of said road, and are particularly described as follows, to wit: _____

[2833]

4-293

F-4

South of base line and East of Mt. Diablo Meridian,
California.

Southern Pacific RAILROAD LIST.

Parts of Section	Section	Acres	Parts of Section	Section	Acres	Section Town Range	Section Town Range	Acres
List No. 86, Visalia, October 29, 1900								
All	29	30	S	E	24	In lieu of		
E. ¹ / ₂	31	"	"	"	"	All		
E. ² N.W. ⁴	"	"	"	"	"	E. ¹ / ₂		
N.W. ⁴ N.W. ⁴	"	"	"	"	"	E. ² N.W. ⁴		
all						Lot No. 1		
S.W. ⁴ N.W. ⁴	"	"	"	"	"	Lot No. 8		
E. ² S.W. ⁴	"	"	"	"	"	E. ² S.W. ⁴		
N.W. ⁴ S.W. ⁴	"	"	"	"	"	Lot No. 7		
						645-37		
S.W. ⁴ S.W. ⁴	"	"	"	"	"	Lot No. 2		
E. ¹ / ₂	33	"	"	"	"	E. ¹ / ₂		
						640		
W. ¹ / ₂	"	"	"	"	"	W. ¹ / ₂		
List No. 56, Visalia, May 10, 1892								
S. ² S.W. ⁴	35	25	"	29	"	S. ² S.W. ⁴		
					2005.37			
					2005.37			

General Land Office

Railroad Division, December 2, 1901.

We hereby certify that we have examined the foregoing list in connection with the plats and records of this office and have found the tracts described therein to be free from adverse claims and lying within the indemnity limits of the grant to the Southern Pacific Railroad, while the tracts designated as bases for said selections were found to have been actually lost to said grant and not used heretofore as [2834] bases for any approved selections.

We, therefore, certify that so far as shown by this examination the selected tracts are subject to approval and patent to said Company.

F. C. Lord,
F. I. Wood,
Examiners.

S. S. Marr,
Chief of Division.

Mineral Division, December 23, 1901.

This certifies that the tracts selected herein are not in conflict with, but are within six miles of mining claims of record in this office.

Approved:

C. A. Hollingsworth,

H. P. Pettet,

Examiner.

Chief of Division

F-5-5

of base line and of Principal Meridian

RAILROAD LIST.

Parts

of

Section.

Section.

Range.

Acres.

Parts

of

Section.

Section.

Range.

Acres.

General Land Office,

Division of Swamp Lands,

Washington, D. C., January 3, 1902.

This certifies that the foregoing list, Supplemental List No. 89, Southern Pacific Railroad Company lands, embracing 2005.37 acres, has been carefully examined in connection with the swamp land records of this office, and that the same has been found to be free from conflict.

Sam'l W. Snow,

Edmond Mallet,

Examiner.

Chief of Division. [2835]

Mineral Division, May 13, 1902.

This further certifies that the tracts selected herein have been published under the mining regulations without protest or objection.

Approved:

C. A. Hollingsworth.

H. P. Pettet,

Chief of Division.

Accounts Division, May 14, 1902.

Expense of survey & Office work on Lands described in the foregoing list.

Railroad Selection 2005 37 Acres

Field work \$132.14

Office work at 115 per acre 10 02 \$142 16

A. B. White

Act'g. Chief of Division.

Railroad Division, May 15, 1902.

Reexamined and found free from adverse claims.

Approved:

F. C. Lord,

S. S. Marr,

Examiner.

Chief of Division.

F-6

NOW, THEREFORE, as it has been found on a careful examination in connection with the authenticated map on file in the General Land Office, of the survey of the Southern Pacific Railroad route, that the foregoing lands fall within the thirty miles lateral limits of said route, [2836] and that the said lands, so far as the records of the General Land Office show, are free from conflict, it is hereby recommended that the tracts described, covering two thousand and five acres and thirty seven hundredths of an acre, be approved and carried into patent, as lands falling within the grant by the Acts aforesaid, to the said **Southern Pacific Railroad Company**, as successor in interest to the Southern Pacific Railroad Company of California, excluding, however, from the approval and from the transfer in the patent that may issue, '**All Mineral Lands**,' should any such be found

in the tracts aforesaid, but this exclusion, according to the terms of the Statute, 'shall not be held to include iron or coal.'

Binger Hermann,
Commissioner. S. S. M.

To the Honorable

Secretary of the Interior.

J. I. P.

Department of the Interior,
Washington, D. C.
May 23, 1902.

Approved: covering two thousand and five acres and thirty seven hundredths of an acre

E. A. Hitchcock,
Secretary of the Interior.'

Mr. Mills—At this time I shall offer a certified copy, duly exemplified and authenticated, under the seal of the General Land Office, of patent No. 111, from the United States of America to the Southern Pacific Railroad, covering the lands embraced in the two selection lists—that is, in [2837] Selection List 86 and Supplemental List 89—namely, Section 29, 31 and 33, of Township 30 South, Range 24 East, with reference to the Mount Diablo Meridian and its base line; these being lands with reference to which the witness J. B. Treadwell has testified on cross-examination, in part. I may say that the certified copy of the patent shows a transfer of lands other than those specifically mentioned, but includes those which I have described. This is offered for the purpose of supplying any deficiency with reference to which counsel for defendants claim that there is no

evidence that these lands were ever selected or patented by or to the Southern Pacific Railroad Company, defendant in this case.

The certified copy of patent 111 last referred to and offered in evidence is marked "Plaintiff's Exhibit 6A—L. L.", and is as follows:

"4-207

B. DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE,

Washington, D. C., September 30, 1912.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record of patents in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. V. Proudfit,

Acting Commissioner of the General Land Office.

(SEAL:

UNITED STATES

GENERAL LAND

OFFICE) [2838]

—————oOo—————

Ex'd C. W. B.

A. M. S.

41

Patent No. 111

Southern Pacific Railroad Lands.

Indemnity Limits.

Visalia Land District California

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870, 'to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast,' and to secure to the Government the use of the same for Postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of said State, to construct a Railroad and Telegraph line under certain conditions and stipulations, as expressed in said Act from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said Company, 'every alternate section of public land not mineral, designated by odd numbers, to the amount of ten alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, granted, or otherwise appropriated by the United States, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed,' and—————[2839]

F-1- **Whereas**, it is further provided by said Act, that 'whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alter-

nate sections, and designated by off numbers, not more than ten miles (111-415) beyond the limits of said alternate sections, and not included in the reserved numbers, and _____

Whereas, official statements from the Secretary of the Interior have been filed in the General Land Office showing that the Commissioners appointed by the President, under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said railroad and telegraph from San Jose to Tres Pinos, and from Alcalde to Mojave, together comprising two hundred and fifty-two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the President, and _____

Whereas, it is shown by certain papers filed in the office of the Commisisoner of the General Land Office, by the duly authorized attorney of the Southern Pacific Railroad Company, with his letter of April 30, 1902, that the said Southern Pacific Railroad Company is the successor by consolidation of the Southern Pacific Railroad Company of California, and——
[2840]

Whereas, the following tracts have been selected under the Acts aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company of California, or its successor, as shown by his original lists of selections,

approved by the local officers, and now on file in the General Land Office, and —————

F-2 **Whereas**, the said tracts of land lie coterminous to the constructed line of said road, and are particularly described as follows, to wit: —

South of base line and **East** of

111-416 **Mount Diablo Meridian State of California Township Thirty Range Twenty-four**

All of section twenty-nine containing six hundred and forty acres. All of section thirty-one containing six hundred and forty-five acres and thirty-seven hundredths of an acre. All of section thirty-three containing six hundred and forty acres. —————

Township Twenty-five, Range Twenty-nine.

The South half of the South West quarter of section thirty-five containing eighty acres.

—————

The said tracts of land as described in foregoing make the aggregate area of two thousand and five acres and thirty-seven hundredths of an acre (2,005.37).

Now Know Ye that the United States of America, in consideration of the premises, and pursuant to the said Acts of Congress,

[2841]

Have Given and Granted and by these presents **Do Give and Grant** unto the said **SOUTHERN PACIFIC RAILroad Com-**

pany, successor in interest to the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid, and described in the foregoing; Yet excluding and excepting 'All Mineral Lands,' should any such be found to exist in the tracts aforesaid, but this exclusion and excepting according to the terms of the Statute, 'shall not be construed to include coal and iron lands.' _____

F-3 **To Have and to Hold** the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company, and to its successors and assigns forever. _____
111-417
418

In testimony whereof I Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

(Seal)

Given under my hand at the City of Washington, this the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and two, and

of the Independence of the
United States, the one hundred
and twenty-sixth [2842]

By the President:

T. Roosevelt.

F. M. McKean,

Secretary.

C. H. Brush.

F-4 Recorder of the General Land Office.

Conveying fees paid May 31, 1902, M. L. 128374

Patent to D. A. Chambers June 2, 1902

Receipt acknowledged June 2, 1902—93166.”

111-418

In 1906, I had an office on the sixth floor of the Chamber of Commerce Building, at Los Angeles, I do not remember the number of the room; I rented that office in 1905 or 1906; the maps, Exhibits 180 and 181, must have been among some other papers that I shipped to my Los Angeles office before the fire; my reason for saying that I shipped them to Los Angeles was because I found them here; they must have got in with some other papers, without any intention of sending any of that matter to Los Angeles; that is the only way I can account for them being here, because everything else was destroyed and they could not come afterwards; sending these two maps to Los Angeles was a mere accident; I did not find them until some time after I had testified here, possibly a month, two months, or three months; I did not tell you when I found them because it was not much of any importance; Mr. Lewers asked me and told me about certain maps, and I told him I [2843] had found them; I showed them to him, these

two, and at his request I brought them; I think that anticlinal was placed on there years ago, but cannot state what year it was; I think it was before 1904, because I have no use for the maps, or anything, since I left the service of the company; I would have introduced it before at this trial if I had had it; I searched more than three days for the maps, through most all the papers I had.

At the time I made the recommendation for withdrawal of certain lands in Kern County, on the west side, in which I testified that certain sections were shaded on Exhibit 115, the map apparently showed the lands in suit and some in the adjoining township of 30-24 as unsurveyed; I believed them to be unsurveyed; I shaded them somewhere along in 1900, 1901, or 1902; and I think that I shaded a great many sections in the Elk Hills at that time; whether I shaded all those that are on that map or not I couldn't say; but it was a similar map that I returned to the office with the shadings on it; as I previously testified, I was not positive whether I made the shadings on that map; it looks like my work; whether it took in all those or not I am not satisfied; I would not say that that is the identical map that I took into the field with me; it was a lithographic map simliar to that, which was very common, and you could get a number of them around the Kern Land Company's office; I did not make it a practice to shade lands as oil lands which had not been surveyed and which the railroad company would not be entitled to until they were surveyed, because they had no interest in it;

they could not withdraw something they did not have; so that, after I made a circle around all the unsurveyed lands, shaded the piece of land which had been surveyed, it is true that I did not shade the oil lands which were not surveyed, because they were unsurveyed.

I do not know that the railroad company afterwards acquired the location which I made in Section 33 of 30-24 for [2844] petroleum purposes, under patent as agricultural land; that was after my time; reading from Exhibit 6A, the first description of land: "South of base line and east of Mount Diablo Meridian, State of California. Township 30, Range 24, all of Sections 29, containing six hundred forty acres, all of Section 3, containing six hundred forty-five acres and thirty-seven hundredths, all of Section 33, containing six hundred forty acres." This patent to the Southern Pacific Railroad Company, embraces the land which John Jean, L. G. Sarnow and I located for petroleum on Section 33 in December, 1899; and also contains the lands which were located by Mr. Burkhalter and the other persons named in the location notices which you have read; my recollection, and honest belief is, that I never posted those notices.

Thomas Stribling's name is familiar, but I cannot place it just now; I am under the impression that I met him at two wells I bought in Beaumont, Texas; I do not know whether the name was Stribling or not; some such name as that; at the time I met Thomas J. Griffin in Texas, I was a stockholder in the

Spindletop Power company; I had only just a few shares, it might have been three or four hundred shares, something like that; I bought the stock through the recommendation of Mr. Bass, with the understanding that I should have the first privilege of air; I was in that way interested in what the company was doing; I do not know Mr. Bass's initials; there were two of them there; one was president of this company, and the other was an oil man; I refer to the president of the company; Mr. Griffin might have been vice-president and general manager of the Spindletop Power company at that time; Mr. Bass I looked to as doing most of the business; I don't know what Griffin was doing outside, merely the engineering; he was a mechanical engineer; how much he had to do with the field work I have no recollection of; Mr. Griffin was not over at my properties, or the properties which I was handling, the pipe- [2845] line, and so forth, while I was there.

I cannot place the Texas-Mississippi property on the Spindletop exactly; I think I was interested in that property, just east of the National Oil Company property; I had an interest in two wells there, but there was no pumping; mine was individual property, which I sold; I do not remember how much I sold it for; I had the two wells equipped up to test them, but they were only pumped a few days; I guess the equipment was done under Mr. Griffin's directions; I suppose I paid the Spindletop Power Company for the equipment of pipelines and putting in the air compression on those wells; I am not pre-

pared to swear whether I did or not; I generally pay my bills; I was not there when the work was done; I think the man that attended to that was Mr. Hansen, W. L. Hansen, I think it is; the money for development of those wells was not furnished me by the Southern Pacific Company, or one of its subsidiaries; I never used any of the moneys of the company for my private work; the only trouble there ever was over that work was when Mr. Hays came out to California and met me there; he said he didn't like the idea of employees speculating for themselves, that it demoralized the balance of the other employees; I was speculating for myself; I was under no contract that the land I bought belonged to the company, although I gave them the first privilege of taking it; I did not have any trouble with Mr. Hays or anyone else in respect to this particular property, I am certain of that; at the time I sold these two wells a man by the name of Hansen made the trade; I did not know that they were water wells; my transactions are all straightforward; the contract was made several months before they took them over, and I do not know who the purchaser was; the records will show; I have nothing to cover up or hide in my connection with the Southern Pacific, and every one connected with it will tell you the same.

I do not remember Mr. Griffin coming to my office in [2846] the Chamber of Commerce Building, to read the Beaumont Enterprise; I did not take the Beaumont Enterprise; it was sent on by Mr. Kennear to me; I do not remember Mr. Thomas J. Griffin

coming up to my office to read it repeatedly, and I don't think he did come.

There is a cemetery near Forest Lawn, near my home; I do not know of Mr. Griffin coming out to visit Mrs. Treadwell and myself at that cemetery and finding us there, or anything of the kind; he was not there with me and my wife; we did not spend two hours there taking him over the cemetery; I will swear that we did not meet him there; my wife would not accompany me through a cemetery with any one that way; we are not in the habit of doing it; my wife doesn't usually go in the cemetery.

I cannot place Thomas J. Griffin, other than the testimony that I have given; I would not know him if I met him on the street today; I don't know Mrs. Thomas J. Griffin; I took my meals at the boarding room at Spindletop; I did not take meals at the house of Mr. and Mrs. Griffin; I don't know where it is.

I did not introduce Thomas J. Griffin, in my office, in the Chamber of Commerce Building, to my son-in-law who was in the bank in Los Angeles; I had no son-in-law in the bank in the city of Los Angeles, or a nephew in a bank in Los Angeles; I did not introduce him to anyone whom I claimed as a relative, by the name of Boynton, or any man; I do not know a man by that name in any bank here.

I did not at that time enter into a contract, on behalf of the Texas & New Orleans Railroad Company, Louisiana Western Railroad, and Galveston, Houston & San Antonio Railroad, for the delivery of about 300,000 barrels of oil, at 15 cents a barrel coming

from the Texas, New Orleans Railroad Company, in which Mr. Griffin attended to the transaction; I know Mr. Bass was interested, and he attended to that himself, and went aboard the car and made the arrangements with Mr. Kruttschnitt, who was there in [2847] Beaumont at the time; I do not think I was there at the time, I think my clerk attended to that; I did not go out in the field with Mr. Griffin; I don't know who organized the Spindletop Power Company; I always understood Mr. Bass was the leading spirit in it and put most of the money in it; I knew that Mr. Bass had the control of it, that is what they always told me; he was all I knew; he was president and the moving spirit in it; my dealings were with him; when I had dealings with the Spindletop Power Company and wanted air to operate my wells I may have stated to Mr. Griffin that the wells belonged to me, and I may not; I don't know; the gas had left the wells and they wouldn't flow, and by added air we could start them flowing again; but those wells, I don't think were put on air until after I had left; about the time they were making arrangements for it, I left; I did not ask the Spindletop Power Company, through Mr. Griffin, to flow some wells near what is known as the Haywood Oil Company, on Spindletop Avenue; those are the two wells that belonged to the Southern Pacific Company; they did not have the air on them before I gave them up; I do not remember A. D. Griffin, the son of Thomas J. Griffin; I did not have any conversation with Thomas Griffin's son in regard to having air put on the

lines to go to the Southern Pacific Company's wells; at that time those wells had not been put on the line; when Mr. Harriman came there there was no necessity for any air to be brought to them, and there was no air to put on them; I had an eight inch line to those wells, but do not know as at that time; I don't think it was finished; I did not tell young Griffin that I was looking for Thomas J. Griffin, or that I was expecting Mr. Harriman and a party and wanted those wells flowed; I did not tell them anything of the kind; Mr. Kruttschnitt telegraphed me a few hours before Mr. Harriman came that they wanted to go out in the field to see the well flow, if they had time; we went out there; Mr. Swain, partner of ex-Governor Hog, [2848] of Texas, who was acquainted with Mr. Harriman, came on the train and came out there; I only introduced him to one man, and that was the man I bought the wells from, at Mr. Harriman's request; I would not volunteer to introduce Mr. Harriman to anybody unless he requested it; I did not ask Mr. Harriman if he was ready to have the wells flowed; I did not introduce him to Thomas J. Griffin, or say that I was buying oil from him and the Spindletop Power Company; I was not buying oil from them at that time, or from any other company; Mr. Griffin did not then commence to flow those wells or explain to him the method of handling oil; the man who flowed those wells was the man I bought the wells from; the wells flowed naturally, with natural gas; I did not put them on compressed air, and they did not need it for six weeks after-

wards; they flowed many thousand barrels before they played out; and all the wells in there had flowed; those wells were capped, and the minute you opened them, all you had to do was to turn the valve, and they flowed right off with the pressure of the gas and oil.

I never dined with Mr. and Mrs. Griffin, and I don't remember ever riding out with him; I had my own horse and buggy; and I did not have any conversation with Mr. Griffin about going out to California, that I was in a position to place him upon some valuable oil lands, or explain that the Southern Pacific Railroad Company had a great deal of oil land in Kern County situated in the Sunset field; no such conversation; I did not attempt to induce any other persons to go out and select lands on the even sections in what is now known as the Elk Hills for petroleum purposes; I did not say in any conversation that I had been over the lands in person on the West Side field in Kern County, or that in my opinion the Buena Vista Hills or Elk Hills would be the best place to drill; I did not tell Mr. Griffin that the Southern Pacific Company owned under an act of Congress all the odd sections along the right of way but that the even sections had not been [2849] taken up, or that I could ascertain what they were and that by simply filing on them and doing the necessary amount of assessment work in order to secure patents that patents would be acquired; I did not make that statement or any part of it to any person in Texas while I was there operating;

I do not know what condition the Spindletop Power Company was in at that time; I suppose they were in good condition financially; when I bought stock in it they were intending to go to work and fix up their plant for the purpose of furnishing air; how much they sold I don't know; I think I sold my stock soon after they commenced supplying air; I never got any dividend out of it; my recollection is I did not get any more for my stock than I paid for it; I do not know what it went to; I don't remember;

I do not remember having any maps in regard to California when I was in Texas; I may have had this Kern County Map, or one similar to it; I do not remember showing Mr. Griffin any map, and I did not advise him to go to California; if I had that map there it would have the unsurveyed lands shown on it the same as it does now; and if I showed Mr. Griffin a map it would be a cross-section of the wells, as a map like Defendants' Exhibit 116 would be a blank to him, or to anyone unless they had gone out and were familiar with the lands; I did not point out to him the unsurveyed lands in the Elk Hills; I would not have pointed out the even sections that could be taken up for oil, because I had no confidence in that section; I selected some of those lands, and abandoned them because I considered them worthless; before the year was up they were selected by the Southern Pacific Railroad Company; I did not abandon them and after in common parlance "double cross" my associates and have the lands

taken up by selection by the Southern Pacific Railroad Company under the Agricultural grant. From the evidence here it appears that they were selected before the year was up, after my location; I do not remember at any conversation I had with [2850] him showing Thomas J. Griffin a pocket map which was identical with Exhibit 115, showing the condition of the oil development in the West Side Field; the map that I had like this did not have any lines showing the anticlinals, subdivisions or wells, or where they had been drilled; it simply showed the lands; the maps I had were in rectangular forms,—townships and ranges [2851] and sections; the Texas forms were altogether different.

I was in Beaumont, Texas, in 1902, but I do not remember the particular months; I never furnished Mr. Griffin with any map—or anyone else; I never had any conversation or letter in which I told Mr. Griffin or Mr. Bass that I wanted a definite answer as to whether they would go with drilling rigs to the Elk Hills, nor did Mr. Griffin say he would take the matter up on Mr. Bass' return; I did not say that I would not give up that map for the reason that it was railroad company property; I don't remember showing him any map, or talking with him about any; and I don't remember saying anything about it being but a short time before a pipeline would be built into the McKittrick fields; I may have said that, but I don't think I did, because I did not believe at that time the oil was light enough to go through a pipeline; it must be a light oil, and most

of our oil is pretty heavy; 14 gravity I call a heavy oil; a light oil is anywhere, 18, 20, 22 to 26; any oil in excess of 25 to 28 would be regarded as light oil; the pipe line they built from Kern River, the first one, the Standard, proved a failure until they got light oil; light oil is worth more than heavy oil; I don't know what it is in the market now, but it will bring a difference of anywhere from 40 to 50 cents per barrel; I do not know when the lands in the Elk Hills forming the basis of this suit and also those appearing on Exhibit 115 were surveyed, only from the records here; I did not know in 1903 that they had been officially surveyed and approved; I did not point out to Mr. Griffin anything about unsurveyed lands in the Elk Hills, or lands appearing on this 115; I do not remember anything of the kind; I don't know why I should; After my visit to the Elk Hills I had no desire to own or develop any part of it; it may be that the Associated Oil Company spent considerable money locating there; you will find people locating everywhere; naturally when a man had a location he would be glad [2852] to see someone come in on land nearby and drill, in order to prove his claim without expense to himself, but I had no such idea regarding the property in the Elk Hills.

REDIRECT EXAMINATION
OF J. B. TREADWELL

My best recollection is that I prepared those notices for location, Jean and Sarnow took them out

with them, having been on the ground before, and posted the notices themselves; that I subsequently went upon the ground and looked it over—whether with one or both of them I don't remember—and said at that time that I didn't consider them worth holding or doing any work upon.

I don't remember the year when the Kern River excitement began, but it was in the summer, and I think in 1890,—no, I mean 1899 or 1900; I was operating at McKittrick; the effect of that excitement was that everybody went and located the odd sections, and went in and applied to the Southern Pacific and got options for purchasing of the railroad lands; they located all around the Kern River field on land that was not good for anything; for miles around, clear up to Posey Creek, away out on the flats; located, I suppose, two or three townships of land; there was a condition of excitement in that country; when I colored, upon the map, a section belonging to the company, the maps for withdrawal of lands from sale were sectionally selected, and that as near as I could determine from general observation, that carried oil. I also extended on the dip of the formation away beyond where it was possible, as I thought at that time, to get any oil. In other words, you might say a blanket; and those questions arose between Mr. Madden and myself, on the ground that I was taking land that I could not identify as mineral lands; which afterwards come up between Mr. Huntington and Mr. Madden and myself; when Mr. Madden set forth his claim, Mr. C.

P. Huntington asked what I had to say; I told him I could not determine where it would go; that people were buying this [2853] land up, paying twenty per cent down, had a number of years to pay it in, and the result was the company didn't get but a small amount out of it, and probably they wouldn't take it unless there was oil in it; and he said that under those circumstances the company could just as well speculate in it as anybody outside, and ordered Mr. Madden to reserve any lands I suggested be withdrawn from sale.

I don't think I had anything to do with the selection of the lands in 30-24 that were patented in 1902; I did not know that a patent application was pending; the selection was not made in any way on my recommendation; the location of the claims in Section 23 of 30-24 was not made at my suggestion for the purpose of getting that land for the railroad company, and no effort was made by me to retain that land under those locations; I did not do anything with it; I simply abandoned it.

RE-CROSS EXAMINATION OF J. B. TREADWELL

It was not a part of my duty as field agent of the Southern Pacific Company to know what lands the company were applying for for patent; it was part of my duty to ascertain what oil lands there were in that field; I always reported everything that I thought—where they had any reservation, where they owned the land—made a reservation—if I

thought there was any indication, and even beyond that, so as to be sure to get it all. I regarded it as a part of my duty when in my judgment I thought the land contained oil to report it to the railroad company and whenever I found any land that I believed to be oil land I did so report it to the railroad company and this was during all the time that I was in their employ. I didn't stop to inquire of Mr. Madden if he was making an application for patent or not on any land when I made those reports as I had plats of the patented land that the company had. I did not make [2854] this inquiry because it was outside of my jurisdiction. I had nothing to do with it. I simply reported on what I thought was oil land and let it go at that. Beyond the patented land, if it was within the indemnity limits, I would not make any report on it. I did, however, in fact, trace out anticlines over the lands that they didn't own on sections that showed possibilities of oil, and I certainly reported those things to the company. I reported only where they were interested and not outside of where they were interested. I thought it was part of my duty to report to them that certain lands where they were interested were not patented, although they contained oil. When I was tracing an anticline, I would report on those lands within the indemnity limits which might be taken and selected and which contained oil, the same as if these lands were patented. I made no distinction. [2855]

I traced no anticlines in the Elk Hills, and reported

on no unselected lands for the purpose of having them selected with that idea in mind.

Recross-Examination:

I remember being in Mr. Mills' office, 406 Post-Office Building, I think it was about February, 1912, about the 18th; I do not remember saying to you that the railroad company took Professor Dumble's opinion as to land values; I did not say that they valued the opinion of Mr. Owen more than Mr. Dumble; if I did it was all wrong, because Mr. Dumble was Mr. Owen's superior, and Mr. Owen would not report only to Mr. Dumble; I would not make any such statement as that; it must be a misstatement; it was not taken down correctly if it is that way; You have got it jumbled up; I did say that Mr. Dumble never said much about what he thought, that he kept very quiet; that he was not very familiar with the oil business, and made some mistakes,—we all make mistakes; I remember referring to a map similar to Exhibit 115, by saying that I made a map before I left, listing all the land, and colored all of it that I thought contained oil and ought to be reserved; I said that I had colored all that contained oil possibilities, and beyond that point; I remember that you asked me if I regarded in 1902 and 1901 the Elk Hills and Buena Vista Hills as oil territory; but I did not reply that one could not say it was not, that it looked all right, or that we found an oil seepage on Section 32; your stenographer has got things mixed up; Mr. Mills, you know that is not so; if I had said anything like that

you or Mr. McCormick would have examined me on it on direct. I did say that the land had no agricultural value at all except for grazing, just in the spring of the year; and when you asked me if Mr. Dumble made any reports to the company, I replied that all of his reports were written; he was great for that; he itemized everything. [2856]

PAUL D. BOWLER, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I have lived in Los Angeles three years, and am connected with the Layne & Bowler Company, a corporation, as president and general manager; they employ about 250 men. This company operates in California, New Mexico, Arizona, Texas, Arkansas and Louisiana, and has branch establishments at Houston, Texas; Stuttgart, Arkansas; Welsh, Louisiana, and Turkistan, Asia; they are engaged in the manufacture of oil and water-well screens for separating liquids from sands, and also the manufacture of centrifugal pumping machinery and the installation of it.

I lived in Texas about seven years, and left there about three years ago; in Texas I was connected with the Peden Iron & Steel Company, of Houston, Texas, and was manager of the machinery department and had charge of the credits in that line for the company; it was my duty to pass upon the risk of credits in the oil fields at Spindletop, Sour Lake, and other places, and I made efforts as such credit man to keep in touch with the standing of the gen-

eral credit of men engaged in business in that field.

While so engaged I was acquainted with Thomas J. Griffin; Defendants' Exhibit No. 179, which you have shown me, is a picture of the Thomas J. Griffin that I knew in Texas; I was acquainted with him since I came to California; I knew his general reputation for truth and veracity in the community in which he lived in Texas; I consider it bad; I knew his reputation there for honesty and integrity at that time, and did not consider it good; I know Griffin's reputation in the community where he now lives in Los Angeles for truth and veracity; it is not good. I would not take Griffin's word in a business dealing myself. There has been no trouble between Mr. Griffin and myself. I have no interest in this controversy whatsoever. [2857]

CROSS-EXAMINATION OF PAUL D. BOWLER

Our company manufacture in Los Angeles, Houston, Texas, and Stuttgart, Arkansas. Griffin never worked for us in California, except as a subcontractor. The Texas company is not connected with the Southern Pacific Company, as far as I know. I do not remember the amount that the Spindletop Power Company was indebted to the Peden Iron & Steel Company when the Spindletop went to the wall. I don't know whether the fact that I was largely interested in the Spindletop Power Company, which went into the hands of a receiver, has any bearing—though it may have—on my general opinion. Per-

haps it does have some weight [2858] among other things. Up to that time my business relations with that company were pleasant. Well, of course, as manager, I suppose I must have considered that Griffin had something to do with its bad management, although that was not really the foundation of my complaint against Mr. Griffin as I have no complaint against him and I could not say that that is the basis of my feeling towards Mr. Griffin. I could not say that I held that up as a grudge against him. I have no grudge against him at all. I don't think Mr. Griffin was a man of large affairs at Spindletop at that period. I never heard of his owing the T. & N. O. Railroad Company as high as \$90,000 and when I am asked if it was because of the unfortunate business concern in which Mr. Griffin was a partner or a large owner and through which I suffered financial loss, I am willing to come here and testify that Mr. Griffin's reputation for truth and veracity and for honesty and integrity, was bad, I say, "No, not that alone, by any means. That might have had a small bearing on my idea regarding the matter." And when I am asked how it comes that when he came out here afterwards to Los Angeles I entered into a contract with him my answer is, "I didn't know his connection at the time I made the contract with the company of which he had been appointed manager." I have never had any trouble at all with Mr. Griffin. The persons in Texas who have told me that Mr. Griffin's reputation for truth and veracity and honesty and integrity, is bad, are

W. T. Jones, who is now with the Union Oil Company, I believe. W. B. Sharp, but he is dead, and J. W. Sullivan of the Peden Iron and Steel Company, with which I was connected as manager [2859] of the machinery department. I am trying to think about someone that is not connected with some company that was a creditor of the Spindletop Power Company. It is pretty hard to know what my reputation is in Texas for truth and veracity. I really don't know how people consider myself. I was always pretty conceited about my reputation. I always bought all the goods my company wanted but I don't think that because I got quite a line of credit that that is the summum bonum of a man's reputation for truth and veracity. I have never been arrested or ever been in court and never been in anyway brought to time about my truthfulness. I have never heard it questioned in any way that I know of. I failed in business in the panic of 1893. I owed a great deal more than I could pay but I worked it out and paid it all. When a man fails in business and his business goes into the hands of a receiver and leaves a large indebtedness, exceeding a hundred thousand dollars, at the time the assets are insufficient to pay more than about twenty per cent of it, he gets a reputation for bad credit when in reality the man may be good hearted and want to pay. That is so. If I should fail in business and owe a great deal of money which I was unable to pay, although willing to do so, I would not want someone to testify against my character, perhaps, but

I would want them to testify against my business ability as being a bad manager. Mr. Griffin has done me no injury whatever outside of the injury which was occasioned by the failure of the Spindletop Power Company and I am sensible of no feeling one way or the other against him. I would not say Mr. Griffin is not a perfectly decent, lawabiding, honest [2860] citizen. I have no prejudice against him whatever. I first learned that I would be wanted to come here to assail the character of Mr. Griffin about six months ago. At that time Miles Bowler, Chief of the detective force of the Southern Pacific, spoke to me on the train in Arizona. Two months after that Mr. Gray came to my office to see me and asked me about Mr. Griffin. I told him I didn't want to get mixed up in anything of this kind. The first time I talked with Mr. Lewers about this case was this morning between eleven and twelve o'clock. I talked with him about five minutes. Previous to that, about a month ago it was, I had the conversation with Mr. Gray. In that conversation I told Mr. Gray just what I knew about Mr. Griffin and Mr. Gray seemed very well pleased with what I told him. He did not tell me that Mr. Griffin had testified in this case. I knew that before I saw him. He told me that Griffin was a star witness, that is, either Mr. Gray or Mr. Bowler told me that Mr. Griffin was the star witness for the government against the Southern Pacific. He didn't tell me what he had testified to and he told me he wanted me to come up and testify to what I knew about

Griffin. I knew he was looking for the record of Mr. Griffin. He took a memorandum book and took down a number of items of people I told him about. I gave him the names of a number of people in Texas. I gave the name of Mr. W. B. Sharp, who is dead, and I gave him the name of E. E. Peden of the Peden Iron and Steel Company, and J. W. Sullivan, and I told him to go and see the different supply houses there and also the banks. I gave him the name [2861] of W. T. Jones. I did not give him the name of M. B. Bass. It didn't occur to me to give him his name. I was picking out the names only of those whom I knew to be enemies of Mr. Griffin. I didn't know any of Mr. Griffin's friends. He might have had friends. I couldn't say he didn't have. I didn't think only of people who had been injured by the Spindletop Power Company, like myself and Jones and the credit men. I gave them the names of people who had transactions with him, that knew him. I had no trouble whatever with Mr. Griffin. I shook hands with him yesterday in the hotel in Santa Maria. He said "Hello, Paul, what are you doing up here?" I told him and I asked him what he was doing up there, and so forth, and a few words passed between us. Mr. Lewers did not tell me anything he wanted me to testify to at all. He did not go over what I have testified to here on the stand with me. He showed me the picture and asked me if I recognized that man and I told him I did. At that time he did not tell me what I was going to testify to here. I asked him if he had been to see

certain people in California and he said he had not. We had a little conversation regarding the matter and I told him I didn't know anything, only in a general way. I indicated to him that I didn't have a good opinion of Mr. Griffin's reputation but I did not go over the whole thing with Mr. Lewers. I told him that I could not give any dates and I meant to say that I had no discussion with Mr. Lewers about what I was going to testify to on the stand here and I did not tell Mr. Lewers everything that I have testified to here about what I thought [2862] of Mr. Griffin's character. I am not in any business relations with the Southern Pacific Company. I sold the K. T. & O. Oil Company some screens about six months ago. I don't remember whether that was just the time or not when Mr. Gray, the Southern Pacific detective, called on me. It was approximately the same time. I think I sold the Kern Trading and Oil Company in the last three years about \$7,000 worth of stuff. I make sales of our manufactured products to the Associated Oil Company. In doing business with the Associated Oil Company I do it through the purchasing agent of the Associated Supply Company, which is the same as the Associated Oil Company. Their purchasing agent is Mr. Wilson, I believe. He is their manager here. I have sold them during the last five years, a couple of thousand dollars worth of stuff. I wish to correct my statement in regard to the Southern Pacific. I drilled two wells for them in New Mexico about eighteen months ago at Gage. The work was direct-

ed from Mr. Platt's office, who is the chief engineer. I don't know the subsidiary companies of the Southern Pacific, therefore that is all I can remember at present. I had some dealings with the Rio Bravo Oil Company in Texas. I sold them oil screens. Mr. E. T. Dumble was at the head of the company at that time. I have not been there in three years. I have had some business relations with them but I don't know who it was with. During my time of doing business with the Rio Bravo Oil Company in Texas I guess I did as high as \$7,000 worth of business with them. The total contract price of the wells we drilled, I think, was about \$2500. That business has been closed and I have been paid my money. I have not done any other [2863] business with the Southern Pacific since. I have bid on work but did not get it. My company in Texas has had some small business with the Texas and New Orleans Railroad Company. When I speak of the Southern Pacific I mean the Atlantic division. The T. & N. O., the G. H. & S. A. and other companies under the Atlantic system. I have done business with the G. H. & S. A. We drilled some wells for them a number of years ago in Texas. We drilled about half a dozen wells. The contract price was about eighteen or twenty thousand dollars. We furnished them screens. They were included in the contract price. I know the Morgan, Louisiana & Texas railroad. It is part of the Southern Pacific system. We drilled some wells for them in Louisiana. I think we drilled two or three wells. The contract price was eight

or ten thousand dollars. We furnished that company with screens for those wells. We have also done business with the Houston & Texas Central Railroad which is a part of the Southern Pacific system. We drilled one well for them at McNeil. The contract price was so much a gallon for water, but we didn't get any. I furnished them with a screen some eight years ago. The cost was about a hundred dollars. That is all the business that I recollect having done with the Houston & Texas Central. We drilled a well for the Houston and East and West Texas Railroad, which I believe is a part of the Southern Pacific system. The contract price of that well was two thousand dollars and included screens that we furnished. My business dealings at Gage, New Mexico, were done with the Los Angeles office of the Southern Pacific. It is not possible that [2864] the vast amount of business which I and my company have done with the Southern Pacific Company, defendant, and its subsidiary companies, has had a tendency to influence my testimony in regard to Mr. Griffin, whom I say has never done an injury to me excepting that his company owed me some money when it went into the hands of a receiver.

RE-DIRECT EXAMINATION
OF PAUL D. BOWLER

My impression of Mr. Griffin was not based upon the failure of the Spindletop Power Company to pay its debts. It is based on a number of transactions, such as the setting of some compressors once in Bat-

son, and the way he conducted himself when he was acting as subcontractor here in California, and what he said to me and told me at different times. The failure of the Spindletop Power Company did not create any feelings on my part, nor did it leave any desire with me to get even with Griffin. It perhaps had a little bearing, in the decision, in my opinion, in the summing up of my opinion of the man. The various transactions referred to with different railroad companies formed a very small portion of our entire business; the business transactions over the territory in which our company operates will amount to a million and a half dollars a year.

RE-CROSS EXAMINATION OF PAUL D. BOWLER

The total percent of our business done with railroads owned and controlled by the Southern Pacific Company might be one percent; the amount that I have mentioned covered a period of seven years.

[2865]

W. T. JONES, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I live in Bakersfield, California; I am employed by the Union Oil Company, about twelve miles from Orcutt, in Santa Barbara County, and am at present engaged in erecting a large gas refining plant; have been in California since the 20th of November, of last year. I was born at Richmond, Virginia, and

subsequently moved to Texas, where I lived near Beaumont for about ten years; I was engaged in Texas with the Rand Drilling Company of New York, and assisted in the development of a patent for flowing of wells, under Mr. Titus, and afterwards was engaged in the erection of machinery for air compressure for a while, and then went into the employ of the Texas Company in the production branch as chief engineer.

I was acquainted with Mr. Griffin in Texas, and first met him in Spindletop early in 1902, but do not recollect the month. Griffin was connected at that time with the Spindletop Power Company as foreman of the air plant; the Spindletop Power Company moved to Sour Lake in 1903 or 1904, and they went into the hands of a receiver in 1903 or 1904; after they went into the hands of a receiver, I saw Griffin at Sour Lake; his son was employed by me while at Sour Lake, and he told me that his father was engaged in the Rio Bravo Oil Company, either constructing or tearing down oil tanks; Thomas J. Griffin stood ten or twenty feet away during this conversation.

I am acquainted with Griffin's general reputation in the community in which he lived in Texas during the years 1902, 1903, and 1904, for truth and veracity; that is, I was for a month or two during the spring, when Mr. Griffin was in Beaumont; it was bad—not good; I was introduced to Mr. Griffin three or four times but I never had but very little conversation with him; my first experience with him was not

very good; he is not a man that I would care [2866] to cultivate an acquaintance with; I do not base my answer as to his reputation upon any feeling that I have personally against Mr. Griffin; I couldn't say how generally his reputation for truth and veracity was discussed in the community; I saw him frequently in the fields, and heard his reputation for truth and veracity discussed quite frequently among oil men, especially among machine men and operators on the field, and it was not good; I have not seen Mr. Griffin since 1904, the time I have just mentioned when he was with his son; I would not like to believe a statement in a business or ordinary matter made by Mr. Griffin to me, knowing his reputation as I do.

CROSS EXAMINATION OF W. T. JONES

I worked for the Texas Company in Texas. They were engaged in the production and refining of oil. They operated in every field in Texas and Oklahoma but their headquarters were originally in Beaumont and are now in Houston. The Texas Company is not controlled by the Southern Pacific. My father was a farmer engaged in the railroad business in Illinois. He worked personally for the Illinois Central Railroad. He was engaged in the transportation department of that railroad. He was Assistant freight agent or division freight agent or something of that kind in Chicago. In 1881 or 1882 I left there and went to work in the Burnside shops for the Illinois

Central as an apprentice. [2867] I was then about twenty four years old. During the next two or three years I had several other positions and I then went back to Chicago as a machinist and worked two or three years for the Illinois Central railroad. I then went to work for the Iron Mountain Railroad. That was about 1893. I then went to Spokane. I didn't do any work there. I then went to Buffalo, New York. I wasn't doing anything. It was not because I couldn't get a job. I didn't care to work. Work was pretty dull at that time and I was looking for an investment. I had some money. It was while I was in Beaumont that I went to work for the Texas Company. That was about 1902. It was either in September or October, as near as I can remember. I remained with them until 1911. We were not in Beaumont all the time I worked for the company. I would be in all the fields. I met with Griffin in 1901 or 1902 at Spindletop. There was only one field in Texas at that time and that was at Beaumont. I presume that that field would cover a hundred acres. Mr. Griffin never did me any injury, none whatever. He never loaned me any money and I never loaned him any. I didn't know that he was Vice President and General Manager of the Spindletop Power Company. I was not well acquainted with Mr. Griffin. I think I would know him if I saw him. I might not. The first introduction I had to Mr. Griffin was when he came to the plant on which I was engaged in work and

wanted to borrow some tools or some fittings and someone introduced me to him and the other occasions were at different times during that and the following year. These [2868] introductions were very brief and I had no business dealings with him of any kind, or his associates. I had no occasion particularly, to remember him at that time any more than any other man. I don't think that it was out of the ordinary. So far as I was individually concerned he minded his own business as far as I knew him. I have no complaint to make now, none whatever, about the way he treated me. I first learned that I was to be a witness here about a year ago while I was on a pullman car en route to Tucson. Some gentleman, I don't know what his name was but I believe it was Miles Bowler, met me on the pullman. I was going into the wash room just before getting into Tucson and Mr. P. B. Bowler of Bowler and Layne, and Miles Bowler, had a paper between them and Mr. P. B. Bowler held up the paper and says: "Jones, do you know that fellow?" and I looked a minute and I said: "Yes, that looks like Tom Griffin." Mr. Bowler of the Southern Pacific asked me about Griffin's reputation. At that time I was acquainted with Mr. Bowler of Layne and Bowler. I knew him in Texas. I began to work for him about a year ago. I know a man working for Layne & Bowler by the name of Russell. He is a kind of night watchman or foreman down there. I don't know if there are any more of the people from the Layne and Bowler works that are coming up here

to testify against the character of Mr. Griffin. I was employed by Layne and Bowler as an erecting engineer. I met a man by the name of Mr. Gray, detective for the Southern Pacific. He did not tell me that at one time he was connected with the government but he told me a good many other smart gentlemen were. I did not have a talk with [2869] Mr. Bowler of Layne and Bowler before I came here. The only time I talked with him was on the particular occasion I mentioned in the pullman car. I did not talk with Mr. Russell at any time about Mr. Griffin. The reason I knew I was wanted up here to day was some gentleman telephoned to me that I was wanted. His name is Luke or Lute, something of that kind. I was not subpoenaed to come here. I presume I am being paid for coming up here. I think my services are worth what I am getting, five dollars a day and expenses. I am not with Bowler and Layne any more. I left there the first of July of this year. I am at present engaged in erecting a large gas plant for the Union Oil Company about twelve miles from Orcutt. I am an erecting engineer. Mr. Quinn is in charge of the work. If Mr. Griffin was asked the question whether he regarded my reputation for truth and veracity in so far as he knew about me in Beaumont, as to its being good or bad, I couldn't say what he would say about it. As to my reputation in Beaumont, my word was always considered good. I don't know anything bad about myself. When I was working for the Texas Company they were furnishing oil to the Southern Paci-

fic or the allied railroads at Spindletop. They had a very large contract at one time with the Southern Pacific. I was told it was a million barrels. [2870]

W. H. DAVIDSON

Witness for Defendants. Los Angeles, Cal,
July 21, 1913.

Direct Examination.

I live at Beaumont, Jefferson County, Texas, and have lived there five years; I am judge of the Fifty-eighth Judicial District, which is the highest trial court in the State; the District court in Texas has exclusive jurisdiction in all contested elections, and land cases, and in all cases where the amount in controversy exceeds a thousand dollars; the next highest court is known as the Court of Civil Appeals, which handles civil matters; in criminal matters it is the Court of Criminal Appeals; it is the court of last resort. I was born in Texas. My father is a judge of the Court of Criminal Appeals and has been serving since 1891; prior to his going on the bench, I was engaged in the practice of law at Beaumont, since July 1, 1908, and five years previous to that I was at Sour Lake, Hardin County, Texas; while practicing law at Sour Lake I knew Mr. Griffin casually.

I knew that Mr. Griffin was connected with the Spindletop Power Company, but my acquaintance with him was more by reputation than personal; I did not know him personally, but knew him by sight. I knew his general reputation in the community for

truth and veracity, and was acquainted with his general reputation at that place during the latter half of 1902 and 1903, and probably the latter part of 1904; Griffin did not stay there a great while, approximately a year from the time that I went there in July, 1903; his reputation for truth and veracity was bad; he bore the reputation first, of being a man who talked a very great deal; he was given to bragging, and in fact he talked so much that his reputation was that he talked so much that he was not considered reliable and truthful; a great many of the people there at Sour Lake called him "B. S." Griffin on that account. [2871]

I have absolutely no personal feeling against Mr. Griffin. I don't know that I would know the man even if I should see him now. I knew him at that time when I met him on the street. He has never done me, or anyone in whom I am interested, any injury whatever.

CROSS-EXAMINATION OF W. H. DAVIDSON

I was not subpoenaed to come into this case. I came here at the request of the Southern Pacific, I suppose. Mr. W. E. Orgain was the immediate cause of my coming and Mr. Gray was the first party that came out there. Mr. Orgain, I presume, represents the branches of the Southern Pacific, I don't know. It is the Texas and New Orleans railroad in the district in which Beaumont is headquarters. Mr. Gray first talked to me in May or June of this year

at Beaumont. I still retain my position in the judiciary. I arrived in Los Angeles Saturday morning. My business in coming to Los Angeles was to testify in this case. I am not paid a cent for coming here. The company pays our transportation. I presume it was a pass that I got. Mr. Orgain paid me—turned me over some funds and I have a pass from the state from Rio Grande here and back to that place. From Beaumont to Rio Grande I bought tickets. Mr. Orgain gave me [2872] \$190 I think, to come out here. My wife came with me. I brought some additional money with me. I don't think what Mr. Orgain furnished me with was sufficient to pay the expenses of myself and wife. My wife has a pass from the Rio Grande to Los Angeles and return furnished by Mr. Orgain. The pass is for myself and wife. The \$190 was over and above the transportation from Rio Grande to Los Angeles and return. It is correct to assume from my testimony that I have a pass from Rio Grande to Los Angeles and return for myself and wife. Rio Grande is on the state line between Mexico and Texas. When I am asked what the tickets cost for myself and wife from Beaumont, Texas, to the point at which the pass was good, the answer is, "It is only a mile or two from El Paso to this state line, and the railroad paid no attention to that as I came over that; I didn't buy any additional tickets but the Cloudcroft tickets, I believe, cost seventy odd dollars. I don't remember if those tickets were paid for out of the \$190 which was furnished me. I had some money

besides that and it may be possible that Mr. Orgain bought those tickets and gave me the \$190 in addition. I won't be positive about that. It may be that the tickets were purchased, possibly, from Cloudcroft and return for myself and wife and the passes issued from there to Los Angeles and return to that point for myself and wife and \$190 in addition to that and when you ask me in my best recollection if that is not probably the fact, I will say that I am afraid to say; I will say that it may be the fact, I don't remember. I brought some money with me and got some more this morning. I don't remember now. [2873] They offered to pay my expenses and pay me whatever I would demand or thought my time was worth on the trip. Mr. Gray seemed to think that my salary would be stopped while I was not serving. And I told him that I would not expect anything in the way of compensation at all. All I wanted was expenses and if there was anything left they would get it back and if there was anything over they would have to refund it. I regarded the pass for myself and wife as part of the necessary expenses of the trip. When you ask me if I received any other money besides the \$190, so far, from Mr. Orgain of the Southern Pacific Company I answer, "Well, I have received—I borrowed some from him not very long ago; I think it was \$100; \$125, something like that; it had nothing to do with this, however. Oh, that was before I went on the Bench, Yes." When you ask me if I have been employed by the Southern Pacific Company in my

private practice as a lawyer, my answer is, "Until I was appointed on the bench I was with the firm of Orgain & Butler. On the first of January, 1912, Judge Hightower resigned from the District bench and went into that firm and I continued with the firm under the name of Hightower and Butler until my appointment this year. During 1912 and until my appointment I was—I think they called me "local attorney" for the Texas and New Orleans Railroad at Beaumont, which, I understand is a branch or subsidiary of the Southern Pacific Company. I think it was on the 10th of July, 1911, when I became a member of the firm of Orgain & Butler. This Mr. Orgain is the same gentleman who furnished this money. He is the District Attorney of the Texas and New Orleans Railroad, [2874] a subsidiary of the Southern Pacific. He also represents the Kansas City Southern in that district. I was in Sour Lake in private practice for five years. My brother in law, George W. Graves, of Houston, was connected with the firm for awhile. The first real practice I did was at Sour Lake and from there I went to Beaumont. The firm of Hightower, Orgain & Butler is still acting for the Southern Pacific. I remember the occasion of the explosion of some of the lines of the Spindletop Power Company when Mrs. Neidbell was killed. I was employed to represent her next of kin in litigation against the Spindletop Power Company. I brought a suit against them. I brought suit for probably twenty five or thirty thousand dollars. I did not have a bit of trouble

with the Spindletop Power Company or Mr. Griffin. I never got where I could have for the Spindletop Power Company went into the hands of a receiver shortly after that and the case was never tried. I understand that my salary as Judge goes on during the time I am absent from the state.

RE-DIRECT EXAMINATION

I think it must have been early in 1904 that the Spindletop Power Company went into the hands of a receiver. It was not long after this explosion which was in the fall of 1903. I was still located at Sour Lake at the time the company went into the hands of a receiver. I do not know of my own knowledge whether or not the property was afterwards sold at a receiver's sale. As to the arrangements that were made for my trip here, Mr. Gray wanted to [2875] know how much I would want for making the trip and I told him that I would not take a cent as remuneration. It was merely a matter of expense on the trip. That was all.

GEORGE W. ARMSTRONG, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I live in Fort Worth, Texas, and have lived there about twenty-four years. I am president of the Texas Rolling Mill Company, and president of the Fort Worth Gas Company, and am a member of the firm of Hubbell, Black & Co., of that city, president of the Denison Mill & Grain Co., of Denison, and

owner of the Horseshoe ranch, and am largely interested in a number of oil producing companies, and a couple of oil mills manufacturing cotton seed oil.

I was originally president of the First National Bank of Sour Lake and had private banks at Batson and Saratoga. I practiced law from the time I was twenty years of age until about 1895, and at that time was elected county judge of Tarrant County, Fort Worth. I was president of the First National Bank of Sour Lake from 1902 to 1904.

I was acquainted with Thomas J. Griffin. I knew him first at Spindletop, and first met him in the spring of 1902. I knew him in the Batson field for a period of about two years, and as president of the bank I had business dealings with him; I loaned him \$1500 on property which he claimed to own; this loan was secured by a mortgage and a note was given for the mortgage; I handled the matter for the bank. The certified copy of complaint now shown me, in an action brought by the First National Bank of Sour Lake against Thomas J. Griffin, Defendants' Exhibit No. 182, describes the note that I have just discussed, and the note was dated April 26, 1904; Griffin had delivered the note to me at the bank at Sour Lake, and a few days prior to concluding the loan I met him on the train. [2876] At the time when this note was given Mr. Griffin was engaged in drilling an edge well; he had been drilling this well as long as thirty days prior to the time when he borrowed the money, and continued fifteen to thirty days after that.

The deed of trust under the power of sale which Griffin gave me was foreclosed by me, and I sold the land amongst other things in the deed of trust, and bought it in for \$50; I subsequently sold it for \$200; Griffin offered as security for the loan from fifteen to twenty thousand barrels of oil in storage, his drilling rig and boiler, two wooden tanks, and the pipe, and the land on which the well was situated; I made two demands on Griffin for the payment of the money, and after the second demand was made he left for old Mexico, and I have not seen him since. I am acquainted with the general reputation of Thomas J. Griffin for truth and veracity in the community where I lived and where I knew him; his reputation for truth and veracity was bad; I became acquainted with that reputation after he left; a number of oil men came to me to discuss the matter with me, knowing that Griffin had left the country, and the circumstances under which he left, and they seemed surprised that I did not know the character of the man; all of them seemed to know that he was both a thief and a liar.

CROSS- EXAMINATION OF GEORGE W. ARMSTRONG

I never had any connection with the Southern Pacific, or Texas & New Orleans Company, or any other railroad in my life, of any sort or character. I was asked to come here to testify by Jesse Andrews and the firm of Baker, Botts, Parker & Garwood, who [2877] are the local attorneys for the Southern Paci-

fic Company. I was willing to come and was a little more willing to come on this occasion because Griffin happened to be a witness and when you ask me if I came because I lost some money on a note while I was running a Bank in Sour Lake, well, it is not the loss of the money. I can lose money with as good grace as anybody but I don't like for a man to swindle me out of it and I don't feel kindly, if that is what you are trying to get at, to a man that does swindle me. I am so sensible to the matter and so full of rancor and bitterness towards Griffin that I tried to have him indicted and he stayed out of the country on account of that. I don't know that he stayed out of the country, all I know is that I couldn't find him and he was quoted as being in Mexico. I don't know that he went to Mexico through the advice of E. T. Dumble, who, at that time, was at the head of the Rio Bravo Oil Company. I know I gave him a certain number of hours to get the money, and during that time he left the country. I am sensible of a strong feeling against Mr. Griffin and it grew out of the fact that he swindled me. He represented he had property and he didn't have. I gave him a mortgage on property he didn't have. I was a banker and I had sufficient confidence in him to loan him fifteen hundred dollars on what I thought was twenty thousand dollars of security and after I loaned him the money and it was not paid I was willing to go on the stand at any time to testify about his character; and I would go out of my way to some extent to do it. I would go three hundred

miles out of my way.” [2878] When I am asked if I ever had a pass from any of the railroads controlled by the Southern Pacific Company my reply is: “Well, now, when I was Judge I may have had a trip pass over the Central; I am not certain—but it was not at that time controlled by the Southern Pacific, no sir. It has been about seventeen years ago. I did travel on trip passes. I have never had any before or since. And we had no anti-pass law then and it was a customary thing for officials to take trip passes. I am sure I have had annual passes but not over any of the Southern Pacific roads. I remember to have had an annual pass over the Fort Worth and Denver and I think I had one over the Santa Fe. I know I had one over the Katy. The Southern Pacific doesn’t reach my town. Well, at that time I was an official and was recognized only from the fact I was an official. I was a poor man at that time. At the time I loaned Mr. Griffin the money in 1904 I had a good enough opinion of Mr. Griffin to lend him the money. I knew he was windy and a blarney and so forth, but I didn’t think he would take the risk of mortgaging property that didn’t belong to him and while I didn’t have an excellent opinion of Mr. Griffin I had a fair opinion of him. I thought I would get the money back or I would not have loaned it. My opinion of him was good enough at that time for me to lend him fifteen hundred dollars on the security that he offered. When you ask me where the mortgage is that I have talked so much about and have’nt produced I will say that I made

a search for it in my papers [2879] but it has been a long time and I failed to find it. At the time I loaned that money, as a matter of fact, I thought every dollar was fully covered by the security given me and many times over. I was willing as a banker to bid in that land that I held as security in the absence of Mr. Griffin at fifty dollars knowing it was worth much more than that and to sell it at a profit of one hundred and fifty dollars. When I sold it for one hundred and fifty dollars it was during an excitement and I was willing to take a chance on the excitement at that time and profit by it. I should have given Mr. Griffin credit for what I bid the property in for but I never did. When you ask me I confess that I never gave him any credit and sued him for the full amount and interest, although I sold his property, I answer I did'n't draw up the petition and it never proceeded to judgment because I could'n't get service on Mr. Griffin. I don't know what became of the deed of trust which Mr. Griffin gave me. I have a world of papers in connection with different banks and I have destroyed a lot of them and a lot of them are down in the old vault. There are some things I can recollect clearly and some things are a little hazy and some perhaps I have forgotten altogether. I have some recollection on the point of the security he gave me and while it is not as clear as I would like to have it, my best recollection is and it is reasonably clear that it embraced fifteen to twenty thousand barrels of oil. I can not give you the names and addresses of the persons who called on

me at the bank and told me Mr. Griffin had swindled me. It would be utterly impossible. I cannot give the names [2880] of any one of them. I told you that several persons came to my bank after Mr. Griffin left and told me the character of the man he was and I now say I cannot tell you who they were and all my testimony is to be believed along the same line as you would take that statement. I have not brought in any deed to show that that property I mentioned was actually mortgaged and there is nothing to show that my statement is correct at all. I know Mr. Bass. He is a man to be believed. He is not a liar and a thief and as far as I know he is a truthful, good man. I have not seen Mr. Bass for four or five years. Mr. Griffin was associated with Mr. Bass. As best I remember I inquired of Mr. Bass within a short time after Mr. Griffin left where he was, then I got busy with other matters and didn't think about it after a little while so I did not pursue the matter for a number of years, forgot all about it. I could not find Mr. Griffin's address when I inquired which was a few months after he left. I have not had my recollection refreshed about how many acres of land Mr. Griffin put up as security for the note because I have not seen the original of any instrument but to the best of my recollection it was one acre. I am quite sure that if he mortgaged five acres that it turned out to be only one acre because I sold one acre afterwards and made title to one acre. He possibly may have mortgaged more and the mortgage itself may have called for five acres. This land

that was mortgaged to me was what you call edge land, which is prospective oil land not yet proven. If it turns out, upon proof [2881] by the drill, to be valueless for its petroleum, it would not be worth anything. On the other hand if it turned out to be oil producing in commercial quantities it would have an enhanced value of anything from five to ten thousand dollars an acre, depending on the character of the oil. I did not go out and investigate to find out whether the security Mr. Griffin was giving me was good although, as I said before, bankers don't loan on any gamble but they must know what they are lending on. I took Mr. Griffin's written statement for that. This money was loaned to Mr. Griffin to finish his well with. He had some trouble with his pipe and he had incurred some indebtedness because of this trouble and he needed this money for the purpose of completing the well and when I am asked as a man acquainted with oil affairs and as an active business man in and around the oil fields and must have known positively that Mr. Griffin could not have had fifteen thousand barrels of oil as the well was not finished, I say: "Well, the well came in a flowing well and the reports are usually exaggerated, and I had some information about the well and that it produced quite a great deal of oil; and Mr. Griffin made the statement to me when he mortgaged the property and I accepted his statement as true. I knew the well was not finished and that the money was to be procured to finish the well, and yet I say under oath that he represented to me that he had produced

from that well fifteen thousand barrels of oil. Besides the land which Griffin mortgaged to me there was included in the mortgage one thousand barrel wooden tank, a pump, some steam heads, twelve hundred feet of casing, [2382] a derrick, the camp and equipment and some strings of pipe. I don't know whether or not there was twenty seven hundred feet of pipe but it included all the pipe he had there. It also included a rotary worth five hundred dollars and a boiler worth five hundred dollars but he did'nt own either one of them and I also took a blanket security, in that instrument, on certain extras about the place consisting of pipe, tools, tongues, wrenches, couplings. I do not say that this personalty had a value of five hundred dollars; the mortgage may have stated the value. I will say that the value of the personalty, including the rigs and tanks as junk, and that was the only way to value it, would be anywhere from fifteen hundred and twenty five hundred dollars. I would probably get about fifteen hundred dollars out of it as junk. The land has a fluctuating, speculative value. It may be valuable this month and to morrow not worth a cent. If it has a value it has it for oil; if it has not any oil it has no value. Its value would depend, if it was like the balance of the field, I mean like the heart of the field—it would be worth from five to ten thousand dollars an acre and if there had been only one acre and it appeared to be valuable oil land I would have been amply secured on my fifteen hundred dollar note. The cost of that twenty-seven hundred feet of pipe would depend

upon the size of the pipe and the character of it. If it was six or eight inch pipe it would have been worth in excess of two thousand dollars but I think this pipe was three or four inch pipe and was worth from fifteen to thirty five or forty cents a foot. [2883] I knew that Mr. Griffin had trouble with that well after I made this loan to him. The well had flowed a good deal and he pumped it with the steam heads on and he produced quite a lot of oil, I understood. I don't know what the character of the trouble was. I know he had trouble. I don't deny that is true; I just say I know he had trouble but I don't know its character. I think this was right after the failure of the Spindletop Power Company. This note was a sixty day note dated April 26, 1904, and the note was due June 26, 1904. I do not remember receiving a letter from Mr. Griffin in the latter part of May, 1904, in which he told me that he had become completely discouraged with the property upon which I had a mortgage and that he would be unable to pay that note. I didn't get any such letter. I didn't have any conversation with Mrs. Griffin about what her husband intended to do about the note. I don't recollect ever having seen Mrs. Griffin. I did not make a statement to Mrs. Griffin in which I said: "I don't want to take that over that property. It is junk to me. I would like Mr. Griffin to go back there and operate that property, and if he needs money, further help, I will give it to him." I didn't know Griffin was married until after he had left there and I received letters from his wife and I didn't say to Mrs. Griffin in any

conversation when she told me that Mr. Griffin wouldn't go back there, that I would take some steps against him and I did not become very angry. When you ask me whether or not I will affirm on my oath, that the trust mortgage which I refer to stated that a certain quantity [2884] of oil was included in that mortgage I will say that to the best of my recollection I believe it was. The chances are that the mortgage covered oil thereafter to be produced from the well as oil already produced. After the maturity of the note I had an opportunity, for how long I could not state, when Mr. Griffin was right in my neighborhood constantly, to bring a suit on this note and reduce it to a judgment but I never did it. This time might possibly have been two months but I don't think it was. I have no desire, on direct examination, to have the court understand that Mr. Griffin had fled from my wrath and the jurisdiction of the court and I don't think that would be a fair inference from my testimony.

RE-DIRECT EXAMINATION.

I have no independent recollection as to whether or not this mortgage transaction was covered by one instrument or more than one. The regular way to do it would be to have two but often you embrace it in one instrument and first record it as a deed of trust and then file it later and leave it in the Clerk's office as a chattel mortgage. Whether in this instrument there were one or two I am unable to remember because it could have been either way. Well, a deed of

trust you send to the clerk and he transcribes it on his records and that deed of trust is sent back to you. A chattel mortgage is filed with the clerk. It costs you the regular recording fee to record a deed of trust; only twenty-five cents to file a chattel mortgage. He has files [2885] under which he numbers the original instruments, and he retains that on this file. When you take it out your mortgage is gone. Now, the regular way would be to have two instruments, one to leave with the clerk, or the chattel mortgage, and the other to retain, the certified—I mean the original of your deed of trust, which is filed,—just depending on whether a man had time to write two instruments. If I was busy I would have made it in one, and if I had plenty of time I would have written it in two, and I don't remember whether I made two instruments or one. Mr. Griffin did own the derrick and the land and that was all that he did own. I visited the land at an early date after the giving of this mortgage and note and I found an earthen reservoir there. I found water in it with a thing scum. The tank was big enough to hold fifteen to twenty thousand barrels of oil. When I say tank I mean a sump hole. I cannot give you the name of the man who owned any of the property. I cannot give you the name of the people who owned the steam heads worth five hundred dollars or the twelve hundred feet of casing worth five hundred dollars. I did find out that Mr. Griffin owned the derrick. I do not know the name of the man whom I found on my investigation owned the three strings of pipe, of

twenty seven hundred feet. I do not know the name of the man whom, in my investigation, I found owned the two pumps worth twenty five hundred dollars. I will answer it all by saying I don't remember the name of any man who owned any of the property. I think the Parkersburg Tank Company owned the tank. That is my best recollection. That is all I can remember. [2886] I know I didn't give Mr. Griffin credit for the two hundred dollars that I realized from selling some of the property because he was only entitled to credit for what the property brought in a sale under the deed of trust.

Mr Lewers—I offer in evidence at this time, in connection with the testimony of the witness George W. Armstrong, a certified copy of the deed of trust referred to by him in his evidence, dated April 27, 1904, certified by the clerk of the county court of Hardin county, Texas, under date of July 26, 1913, and read the same into the record as follows:

“THE STATE OF TEXAS,
COUNTY OF HARDIN, KNOW ALL MEN BY
THESE PRESENTS: That I, T. J. Griffin of the
County of Jefferson, and state of Texas, being justly
indebted to the First National Bank of Sour Lake,
Texas, in the sum of fifteen hundred (\$1500.00) dol-
lars as evidenced by promissory note of even date in
words and figures substantially as follows: Sour
Lake, Texas, April 26” 1904.

Sixty days after date I promise to pay to the order
of the First Natl. Bank of Sour Lake, at the First
National Bank, Sour Lake, fifteen hundred no/100

dollars (\$1500.00) for value received with interest at the rate of eight per cent per annum from maturity until paid, this note is secured by pledge of the securities, mentioned on the reverse hereof with the right to call for additional security should the same decline and on failure to respond, this obligation [2387] shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of the said property or any part thereof or any substitute therefor or any addition thereto at public or private sale at the option of the said first National Bank of Sour Lake, on the non-performance of this premises and without further notice, applying the net proceeds first to the payment of this note and the balance at the option of the First Natl. Bank of Sour Lake to any other liability to said First Natl. Bank of Sour Lake, now existing or which may hereafter accrue and accounting to me for the surplus if any and hereby agree to pay attorneys fees of 10 per cent in case of suit. It is further agreed that the pledges shall have the right to buy in the said securities at market rate at said private or public sale. T. J. Griffin. The payment of which note according to its tenor and effect I desire to assure and secure the said First National Bank of Sour Lake or its assigns in consideration thereof and for the purposes and trusts hereinafter set forth and declared and also in consideration of ten dollars to me in hand paid the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, sell and convey unto C. L. Edwards trustee of

the County of Hardin, in the State of Texas, the following described property, One acre of land, to wit: acre number three (3) of the John D. Jackson subdivision of the H. G. King original survey of forty two (42) acres patent number two hundred and twenty five (225) situated in Hardin County, Texas, in [2888] what is known as the Batson Oil field, same being in strip B. of said Jackson subdivision. Also an oil well now producing and in operation on the acre of land above described, same being locally known as the T. J. Griffin well No. 1, number one, together with all and singular the rights and appurtenances to the same belonging or in anywise incident and appertaining. And I do by these presents bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said C. L. Edwards Trustee his heirs or assigns against the claim or claims of any and all persons whomsoever lawfully claiming or to claim the same or any part thereof. This conveyance however is intended as a trust and is made for and upon the following trusts terms and conditions, to-wit: In the event I, T. J. Griffin shall well and truly pay the said note and interest due thereon to the legal holder thereof when the same shall become due and then this deed and all herein contained to be null and void, but in case of default on my part or on the part of my assigns to pay the said note according to its tenor and effect, it shall thereupon or at any time thereafter the same remaining, unpaid, be the duty of the said C. L. Edwards trustee and of his success-

ors as hereinafter provided at the request of the said First National Bank of Sour Lake or the legal holders of said notes which request is hereby presumed to enforce this trust to sell said hereinbefore described property at the court house door of said Hardin County, to the highest bidder for cash on the first Tuesday of same month between the hours of 10 o'clock A. M. and 4 o'clock P. M. [2889] at public first giving at least twenty one days notice of the time, place and terms of sale by causing a notice thereof to be published in some newspaper published in the County of Hardin, once a week for three successive weeks next before the day of sale and also by posting written or printed notices of the time place and terms of such sale at three different public places in said county, one of which shall be the court house door of said county for not less than twenty one successive days next before the day of sale and to make due conveyance to the purchaser or purchasers with general warranty and the title to such purchaser or purchasers when so made by said trustee shall bind myself, my heirs, executors and administrators to warrant and forever defend, with the proceeds arising from such sale the said trustee shall first pay all the expenses of advertising, sale and conveyance including a commission of ten per cent principal and interest due and unpaid on said note to the said First National Bank of Sour Lake, or other holder of said note and the remaining balance if any, shall pay over to the said T. J. Griffin his heirs or assigns. In case of the death inability, refusal or failure from any

cause the said trustee shall fail or be unable to act then R. H. Halland of the County of Hardin, in the State of Texas, is hereby constituted and appointed alternate trustee who shall thereupon hold, possess and execute all the titles, rights, powers and duties herein conferred on said trustee and whose conveyance to the purchaser shall be equally valid and effective. And in the event the said trustee and alternate [2890] trustee should die or from any cause shall fail or be unable to act in carrying out the provision of this deed then the legal holder of said note shall without other formality than an appointment and designation in writing name, constitute and appoint a successor and substitute who shall thereupon hold, possess and execute all the rights, title, powers and duties, herein conferred on said trustee named and whose conveyance to the purchaser shall be full evidence of the matters therein stated, and no other proof shall be requisite of request by the holder of said indebtedness to the trustee to enforce this trust or of the advertisement or sale or any particulars thereof and all prerequisites to said sale shall be presumed to have been performed, and the sale made under the powers herein granted shall forever be a perpetual bar against the maker of this trust his heirs and assigns. The legal owner of said indebtedness shall have equal right to become the purchaser at such sale, being the highest bidder.

Witness my hand at Sour Lake, Texas, this 27 day of April, 1904.

T. J. Griffin.

“THE STATE OF TEXAS,
COUNTY OF HARDIN. Before me, J. A. Hoover, a Notary Public in and for Hardin County, Texas, on this day personally appeared T. J. Griffin, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. [2891]

Given under my hand and seal of office at Sour Lake, this 27 day of April, A. D. 1904.

J. A. Hoover, Notary Public,
(Seal) Hardin County, Texas.

THE STATE OF TEXAS,
COUNTY OF HARDIN. I, R. M. COLLINS Clerk of the County Court in and for said County do certify that the foregoing deed of trust dated the 27 day of April 1904, with the certificates of authentication was filed for record in my office the 29 day of April 1904 at 8 o'clock A. M. and duly recorded the 3 day of May 1904 at 10 o'clock A. M. in D. T. record of said County in Vol. 3, pages 459 to 462.

Witness my hand and the seal of the County Court of said County at office in Kountze, the day and year last above written. R. M. COLLINS Clerk County Court,

Hardin County, Texas.
(Seal) By J. D. Lowrey Deputy.

THE STATE OF TEXAS,

COUNTY OF HARDIN. I, J. J. Bevil Clerk of the County Court in and for Hardin County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the record as the same appears of record in D. T. record Vo. 3, page 459 et seq.

Given under my hand and seal of office this the 26th day of July, A. D. 1913. J. J. Bevil Clerk County Court,

Hardin County, Texas.

By M. L. Chance Deputy."

(SEAL: County Court of

Hardin, Texas.) [2892]

MR MILLS—No objection.

The certified copy of deed of trust last referred to and offered in evidence and read into the record is marked "Defendants' Exhibit 183—L.L."

Mr Lewers: I also offer in evidence, in the same connection, certified copy of registry entry of chattel mortgage, dated April 27, 1904, for \$1500, given to C. L. Edwards, trustee, by T. J. Griffin, certified under the seal of the county clerk of Hardin county, Texas, and read the same into the record as follows:

<i>Date of Reception:</i>	<i>Name of Mortgagor:</i>
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Apl. 29, 04-8 A.M.

T. J. Griffin

Name of Mortgagee:

C. L. Edwards, trustee

<i>Date of Instrument:</i>	<i>Amount secured:</i>	<i>When due:</i>
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Apl. 27, 04

1500.00

June. 26, 04.

Property Mortgaged:

1 Rotary Rig complete on acres No. 3 of J. D. Jack-

son's subdiv. of H. G. King sur. also $\frac{1}{2}$ of the production of an oil well now flowing on the T. J. Griffin well No. one.

The State of Texas)

County of Hardin) I, J. J. Bevil, Clerk of the County Court in and for Hardin County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Chattel Mortgage from T. J. Griffin to C. L. Edwards, trustee, dated Apl. 27, 04, as the same now appears of record in my office in Chattel Mortgage Register, No. 1. [2893] on page 56.

Given under my hand and seal of office at Kountze, Texas, this 26th day of July, A. D. 1913.

J. J. Bevil, County Clerk

Hardin County Texas.

(Seal: COUNTY COURT
OF HARDIN COUNTY, TEXAS)''

I. N. BETTISON, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I live at San Antonio, and have lived there two and one-half years, and have been engaged in the business of oil drilling and contracting for about twenty years, at Beaumont, Sour Lake, Batson, Saratoga, Jennings, Louisiana, Mobile, Alabama, and in Oklahoma; I own some oil land at Sour Lake and Batson. I was at Sour Lake in 1903; I was acquainted with Thomas J. Griffin, and knew him well in a general

way and worked right along with him at Spindletop in the boom days, and from there to Sour Lake. I was acquainted with his general reputation in the community for truth and veracity; I heard it discussed in the community by everybody in the field; it was considered very bad.

CROSS-EXAMINATION OF I. N. BETTISON

If Mr. Griffin was asked what he thought of my reputation for truth and veracity, if he told the truth he would say that my reputation was good. I am quite well satisfied with my reputation. My credit will show that my reputation is alright and I am willing to have it investigated from the cradle up. I have nothing in the world against Mr. Griffin. I have had absolutely no trouble with him. I never had a word with him in my life and I never had any business dealings with him. When you ask me to give the names and [2894] addresses of the persons in Sour Lake who told me that his reputation is bad, it is just as I told you in a general way, it is generally known all over the field and when you ask me the names of the men who told me in Sour Lake, and to give their present addresses, well, I didn't give it to you. I told you I knew, in a general way. I cannot now give you the name of any person there or the present address of any person who told me that Mr. Griffin's reputation was bad. I know it in a general way. I didn't give anybody's name.

Mr. Osceola Archer, at Sour Lake and at Spindle-

top in 1902, told me that Griffin's reputation for truth and veracity and integrity was bad. I don't remember who else told me. I paid no attention to it. I knew his general reputation — stood right on my derrick and told me that he was making more money than any man on the whole field, when I knew he could not pay his debts. I mention that to show you that I knew what his reputation was. I have nothing against Griffin; if I met him today I would treat him as I always treated him. He and I never had a word in our lives. I drilled a well for the Rio Bravo Oil Company at Saratoga. I think it was in 1905. It was under the direction of Prof. E. T. Dumble. The price was about \$5600. I just finished one well for the San Antonio, Uvalde & Gulf Railroad. The contract price, I think, was \$5000. I have had no business of any kind with the Southern Pacific Company or any of its subsidiaries except washing a well for them after I drilled this one for them at Saratoga. They had a well that was sanded up and I washed it for them. The company that I washed it for was the Rio Bravo. That was in 1905, right after I finished this other well. I have done drilling for the Texas Company. I drilled two wells for them, I believe it was, at Batson, and then — not the Texas Company, either; the Producers Company; that is practically the same thing; that is the producing end of the Texas Company. Then I had charge of drilling [2895] some out west in Reeves County for several months. I should say that I have done \$8000 worth of work for the Texas Company.

JUDGE OCEOLA ARCHER, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I lived at San Antonio for four years and was engaged in the fire insurance and oil business; my insurance business yields me five or six thousand dollars a year; I was drilling two wells at Somerset, Texas, but went out of the oil business when I lost my eyesight, and went into the insurance business, but during the last few months I have taken some leases at Somerset; have about 1720 acres; I am a member of the San Antonio Rotary Club, the San Antonio Automobile Club, and also of the Chamber of Commerce. I lived at Sour Lake, I think, in the first part of 1903, or it might have been in 1902; I was superintendent for F. S. Henry, drilling wells, and remained at Sour Lake until the Batson field opened up.

I was acquainted there with Thomas J. Griffin, and knew that he was connected with the Spindletop Power Company; his nickname was "Spindletop" Griffin; I was acquainted with his general reputation for truth and veracity in that community; it was very bad; I have no personal feelings against Mr. Griffin whatsoever.

ROBERT LEE BLAFFER, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I have lived about five years at Houston; I was in

the business of producing oil, mostly at Humble, and have oil interests in some of the large companies; have been engaged in that business from 1892 to 1902. I first became interested in the oil business at Beaumont and Spindletop, and have two or three companies at Beau- [2896] mont that are not incorporated, but are operating at the present time; my personal operating expenses run to about six or seven thousand dollars a month.

I was acquainted with Thomas J. Griffin and first met him at Spindletop, in the Spring or summer of 1902, and knew him for about a couple of years after that, but never did any direct business with him; I saw Griffin going through the fields every day while I was on Spindletop, and knew he was connected with the Spindletop Power Company; during the time he was with that company I knew him at Sour Lake, principally.

To a certain extent I was acquainted with his reputation in that community for truth and veracity. When I say to a certain extent I mean that I have heard him discussed by several people. I never had any business with him directly that I could ascertain his general reputation for — but I think I did know his general reputation aside from my own individual knowledge. I don't think it was very good. I can't say how generally he was talked about in that respect. In that community he was generally called Tom Griffin. I don't know of his going by any other name. I am well acquainted with a man by the name of J. B. Treadwell. I first met him in New Orleans five or

six months before I came to Beaumont. I have been in his employ. He sent me a telegram to New Orleans either in March or April, 1902, asking me to come to Beaumont. He gave me a position with him. I was acting in a sort of confidential capacity with Mr. Treadwell until he left to go back to California, I think the first of October of the same year, and I stayed with the interests which he represented about a month or six weeks afterwards, up to the first of November or the first of December, 1902. I was not employed by him after that [2897] time. He turned his interest over to somebody else and I was employed by this other party. I think Mr. Treadwell left in September, 1902. While I was employed by him I was in a position to keep track of the correspondence, or all the files in his office. I was a sort of private secretary or scout, private scout, for Mr. Treadwell, and he would keep me informed as to everything that was going on in connection with the business. Then I ciphered lots of code messages that he got. It was of a sort of confidential nature. I would have access to any papers that he had, I think. He never kept anything from me that I know of in connection with the oil business. I never saw in his possession, or any other place, any maps of the oil fields in California showing territory in the lower part of Kern County up into the Coalinga district and Fresno County, nor did I ever see in his possession any map that showed the geological formations and had the name of a geologist upon it covering that territory. I never saw a map of that kind, of that description. I never saw

in his possession any map that showed the unsurveyed lands in what is known as the McKittrick district or what is known as the Elk Hills in Kern County, California. I saw all the maps he had there in connection with this coast country field here—Spindletop. That is the only map I ever saw—Sour Lake. They were maps though, that could be purchased on the street, you know. He had no California maps here. I never saw any. I do not know of his making a copy of any California map at any time while he was here and I do not know of his ever giving Thomas J. [2898] Griffin a copy of any map that he had. Mr. Treadwell never informed me that he had shown any map of the California oil fields to Mr. Griffin or to anybody else in Texas. He never showed me anything in connection with California at all. He never told me that he had shown Mr. M. B. Bass any copy of a map or any map of the oil fields of California. I do not know of his asking Mr. Thomas J. Griffin or M. B. Bass to go out to California and locate on any oil lands out there or prospective oil lands. I have no recollection of hearing of anything of that kind. I never received a communication from Mr. Treadwell after he had gone to California asking me to go out there. I went out there and visited Mr. Treadwell. I think that was in the month of December, 1902. I went out there and I met him in Bakersfield, just paid him a visit there, and we went on to San Francisco together. He communicated with me in 1903 in regard to going to Alaska. He was getting up an expedition to go to Alaska and he asked

me if I wanted to go out there with him to Alaska and I told him no, I didn't want to go. He never asked me to go out to California and locate upon any oil lands or to obtain any interest in the oil lands there.

CROSS EXAMINATION.

The Spindletop Power Company, when I knew it, was furnishing compressed air to wells around Spindletop field. They had two or three inch lines from the Power Company to the wells and they would blow the wells for a certain percentage of the oil. When I came to Beaumont in the spring [2899] of 1902 I don't think the Spindletop Power Company was organized and doing business. It was organized that summer. It was another company called the Palestine & Beaumont Company that Mr. Griffin was connected with in some capacity. They had air machinery and were blowing these wells. Everything Mr. Treadwell had up there in the way of wells he rented in his own name. I was working for Mr. Treadwell and I didn't recognize anybody but Mr. Treadwell. There were two wells called the Treadwell wells that he was operating. They were at that time, I remember, flowing naturally. There were two big wells that he had purchased. I do not remember when they were connected up with compressed air by the Spindletop Power Company. Mr. Treadwell shipped the oil out in his own name. He paid all the bills and everything was charged to J. B. Treadwell. I took it for granted that he was operating property for the Southern Pacific. I think he was represent-

ing the Southern Pacific Railroad. I know I had railroad passes issued to me from the railroad company at that time. The wells that he was operating, the only wells that I know, were wells that were known as the Treadwell wells. These were the two wells I spoke of awhile ago. I presume the wells I mentioned were the ones he was operating for the Southern Pacific Company. I know Mr. Harriman came to the oil fields during the time I was acting in the capacity of amanuensis. I was not there that day. I heard he had been there. I was busy. Mr. Treadwell sent me somewhere out in the country. That visit of Mr. Harriman's was sometime in the spring or summer of 1902. I think it was 1902. [2900] I don't know how long Mr. Harriman stayed. I was not there that day and I didn't see him. I have nothing personally against Mr. Griffin. Mr. Griffin was a hard working man out in that field, a decent, law-abiding citizen; he seemed to be a busy man. I never had any personal business with Mr. Griffin. I just met him in a general way in the field. I had no occasion to have any business with Mr. Griffin. Speaking of the occasion of 1902 when I was there I naturally would be prejudiced from what conversation I heard against the man. I never investigated him. I never had enough interest in it to do so. I had no reason to believe that Mr. Griffin was not a man worthy of belief until after I heard this gossip, just this conversation about him. I never paid any attention to it. That would naturally prejudice me. I have not seen Mr. Griffin for a long time. I have

not anything against him personally at all, and when you ask me if in 1902 I would have believed Mr. Griffin and thought well of him then I answer, "I had no occasion to believe otherwise when I first met him". It was not until I heard this conversation, until after he had come up to Sour Lake in connection with the Spindletop Power Company. I think Mr. Treadwell knew Mr. Griffin at that time. I think he knew him pretty well. I don't know how well he knew him. I take it for granted he knew him as well as I did. I would not consider I knew him very well because I did not have occasion to do business with him. I was acquainted with Mr. E. T. Dumble. I met him the last month that Mr. Treadwell was in Beaumont or probably a few days [2901] before Mr. Treadwell left there and I have known him ever since. When I am asked if I ever heard the statement that Mr. Dumble was drawing \$15,000 a year from the company because he advised the company to hold onto a bunch of land in California which is oil land, well, I will tell you how that conversation that I had with Mr. Flocker came out. Mr. Flocker and I were speaking in a general way about conditions; about this law suit. I think it was last winter or early spring. I told Mr. Flocker that I was one day talking to a man by the name of Ben Andrews in just a casual sort of way at a club and we were speaking about the relative merits of several oil men at the head of large corporations. I asked Mr. Andrews, "where is it that Mr. Dumble gets his great influence with the Southern Pacific and is at the head of the big company that he is?" Mr.

Andrews said he thought that the reason it was so was that the Southern Pacific were going to sell some land out in California and that Mr. Dumble advised them not to do it. That was just idle gossip as we were sitting at the club there talking, and we spoke of that in a general way. At the time of that conversation I had an office in the Carter Building in this city. I had an interview with Mr. Flocker sometime that winter of 1912-1913. I told Mr. Flocker in that conversation that I had come out to the Kern River field in the fall of 1902 to visit Mr. Treadwell and that Mr. Treadwell took me over the oil field. I don't know whether we drove over the West side, East side or the North side. Mr. Treadwell at that time told me that he thought well of the wells they were pumping there. I [2902] asked him how long lived they were. Mr. Treadwell told me that he thought well of the property right in there; that he was operating for the Southern Pacific Railroad. When I am asked if I told Mr. Flocker in that conversation with him that Mr. Treadwell held land at Beaumont for the Southern Pacific Company in his own name and people didn't find it out for a long time I answer, "Well, I don't know whether people found it out for a long time." I was working for Mr. Treadwell and I take it for granted that Mr. Treadwell was working for the Southern Pacific Railroad. If anybody would have taken the time, they could have found out Mr. Treadwell was connected with the Southern Pacific—I would suppose so. I told Mr. Flocker that Mr. Treadwell held property in Beaumont "but I don't

remember telling him that people didn't know anything about it for a long while''. I did not say to Mr. Flocker in that conversation that I thought well of Mr. Griffin. I said I thought I might believe him at that time. I don't remember telling Mr. Flocker on that occasion that Mr. Griffin had never been in any trouble in Texas to my knowledge but I don't remember of having any occasion of knowing of Mr. Griffin's ever being in any trouble before. I recollect that Mr. Flocker asked me whether Mr. Treadwell knew Mr. Griffin and I told him I thought Mr. Treadwell did know Mr. Griffin. I think Mr. Treadwell would be mistaken. It is my impression that Mr. Treadwell did know Mr. Griffin. My attention being called to Defendant's Exhibit 115, which is a map of Kern County and which Mr. Treadwell on the stand testified he may have had with him in Texas, this is the first time [2903] I ever saw this map. I never saw any map in connection with California at all. Mr. Treadwell might have had that map in Texas and I not know it.

RE-DIRECT EXAMINATION.

I came pretty near seeing all of Mr. Treadwell's papers and he seemed to have a lot of confidence in me and he never withheld anything from me that I know of. I remained on friendly relations with him after I left here. The time I went out to California I went to Los Angeles and I think I had a wire from Mr. Treadwell to come to Bakersfield and I met him in Bakersfield and he went to the train to meet me

and I went over there and spent a night and the next day went to San Francisco. The place where we went was to a house at Kern River, I think. We did not drive away from that field, not to any extent, just went to those wells. I was interested because they were being operated so differently from ours. Nothing went on there except through interest he had in making my trip pleasant and interesting to me, I suppose. When I first went to Bakersfield I had no reasons to doubt Mr. Griffin's word. I had just met him. It was later I had reasons to question his reputation as to truth and veracity from the gossip that went around about Mr. Griffin. I roomed with a man who was employed by his company and I discussed Mr. Griffin with that gentleman in a general way and with others too. [2904]

Personally I have nothing against Mr. Griffin.

M. B. BASS, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I live at San Antonio, Texas, and prior to going there I was living at Palestine; I lived at Beaumont from some time in the spring of 1901 to the spring of 1904; I organized the Spindletop Power Company in 1902. I knew Thomas J. Griffin, who was connected with the Spindletop Power Company in the capacity of vice president and general manager. The company continued to operate at Beaumont for about a year and then moved to Sour Lake, some time in 1903, and continued to operate there until it went into

the hands of a receiver. Mr. Griffin was continuously in the employ of the Spindletop Power Company until it went into the hands of a receiver, and was engaged in his duties as vice president and general manager during that period, and I was active in the affairs of the company up to that time; I did not know of Griffin making a trip to California while he was connected with the Spindletop Power Company; that time would include clear up to the time the company went into the hands of the receiver; Mr. Griffin sometimes went away and was gone a few days. Of course, I don't know where he was when he was gone but he didn't tell me at any time that he was going to California. Of course I didn't see him every day as I stayed at Beaumont and he stayed at Sour Lake and sometimes I wouldn't go over there for a week.

I am acquainted with J. B. Treadwell and knew him at Spindletop and Beaumont, somewhere around January, 1902, but never had any conversation with him in reference to going to California to locate oil lands, and do not remember him ever showing me any map of the California oil fields. I do not remember Mr. Treadwell suggesting that he and Griffin and I should go to California and [2905] locate certain even numbered sections, interspersed with lands that the railroad owned. I do not remember Treadwell showing me a map purporting to represent the territory from Sunset, Kern County, California, up to Coalinga, which contained geological information, or of Thomas Griffin ever telling me that Mr. Treadwell had asked him to go to California; I have no recollec-

tion of Mr. Treadwell or Griffin making the proposition that we should go together into the oil fields in California; if such a request had been made of me at that time, well, I don't know but that I would have forgotten it. I have forgotten a whole lot of things that happened down there.

I remember having an interview with Mr. Ira M. Flocker about five months ago, and I signed a statement written by him. I made an objection to one of the statements written by Mr. Flocker regarding Treadwell's showing me a map of the California oil fields, and told Flocker that I could not sign that because I did not remember the map; Flocker thereupon took that out and made it read that I had seen maps in Treadwell's office. I saw some maps in Treadwell's office; they might have been of Spindletop, but I do not remember what they were, really.

CROSS EXAMINATION OF M. B. BASS

I am sixty years old. I had a sickness in the fall of 1903 between the first of October and first of January, 1904. My impression is that I was sick from Christmas, 1903, and I was under the weather for quite awhile, say six or eight months. I was sick while the company went into the hands of a receiver and it continued right through that time. My malady was kidney trouble. I was put on a very strict diet and it kept me very weak all the time. We had litigation with a company known as the Texas Company. They [2906] were operating in Texas in the

oil business. Our plant was on the southern side of their tract of land. They had a good big tract of land there. And we wanted to reach the wells on the northern portion of this tract, and we undertook to go across there with our pipeline. And we had condemnation proceedings, and the court allowed us to go across, and before we got across they enjoined us, and we fought around there for a few days, and they finally brought us up to the Superior Court; and in that manner we had to go several miles out of our way, run a small pipeline several miles around this tract to get to the wells, and in that way our power was reduced to a mere minimum. We could not utilize the plant. This litigation with the Texas Company, I think, was the paramount reason for the failure of the Spindletop Power Company. At least it was one of the primary causes. It had been the custom in the field there, prior to that trouble that we had with the Texas Company for different oil companies to permit the crossing of lines over their property promiscuously when it didn't interfere with the operation of their business; all the oil companies up to that time, I think, had had the privilege of crossing and laying their pipe lines in such a way that it didn't interfere. The Spindletop Power Company had given formal permission to other companies to cross its lands with pipe lines free of charge. The first company to put compressed air on a well in the Spindletop field was the Palestine and Beaumont Oil Company. I was President of that company. The man who actually did the mechanical work of placing

the air on the first well in that field was Mr. Thomas J. Griffin. [2907] From my knowledge of Mr. Griffin I regard him as a practical, competent man in and about the operation of an oil well. I consider him a very valuable man along those lines and regard him as an expert mechanic. In the operation of machinery in oil work on the field there was always knotty questions coming up about something that requires a pretty good head to overcome and Mr. Griffin seemed adapted to that line of work. I have known him to go into an iron factory and show them how to make a pattern of certain things that we wanted about the machinery, or in a break or something like that, you know. What I have reference to is his resourcefulness and mechanical skill. He seemed to be able to take up those things and carry them to a successful termination. Mr. Griffin, I think, did most of my work and when it is asked of me if I know of any better man in the Spindletop field in a mechanical way, or a more competent man in and about the oil field than Mr. Griffin, I will say, "Well there may have been some there but I don't know that I had any connection with them". Whenever any of the wells in the Spindletop would go wild or blow up, or get into trouble Mr. Griffin was called into consultation to assist. He was called on several times and brought into requisition, and I think, closed one or two wells—either Sour Lake or Spindletop; I have forgotten which. I know of one pretty bad one that was closed at Sour Lake; the well was going wild. He had to go in and shut it off someway and he did it. In going

into a new field to begin the operation of a well I would regard Mr. Griffin as a thoroughly [2908] competent man to take charge of drilling operations. Mr. Griffin was at Spindletop in the years 1902 and '03 at the time that I stated that I knew Mr. Treadwell quite well. During that time Mr. Griffin had an opportunity to know Mr. Treadwell and I know that he did know Mr. Treadwell and that Mr. Treadwell knew him. In the Spindletop field an oil man in the discharge of his duties there, was first in one part of the field and then in another, backwards and forwards—and some days they might meet several times during the day and then it might be a week. I don't know how often Mr. Griffin and Mr. Treadwell did meet but I suppose they undoubtedly came together a great many times. The Spindletop field at that time covered about one hundred acres of land and the Red Book stated that forty or fifty million barrels of oil was taken from that field as it was very productive for such a small area. There were from seventy five to one hundred and fifty wells on this land. I think Mr. Treadwell had a couple of wells there which I think was known as the Yellow Pine, but it might have been some other name. I do not know which company, the Palestine-Beaumont Oil Company or the Spindletop Power Company—had air connections with Mr. Treadwell's wells there but I am pretty sure it was one of them. The Palestine-Beaumont Company put in some machinery there some little time before we got our Spindletop Power Company operating and we equipped quite a number of wells

on that plant. I know that it was one or the other of these companies that had made the air connection with Mr. Treadwell's wells. Mr. Griffin was in charge [2909] of the Palestine-Beaumont Company as manager there on the hills in its early stages and I think he was connected with us up to the time that we organized the Spindletop Power Company. That is my impression now and when the Spindletop Power Company got in operation—and maybe a few months before, just a little while, we changed the management. We put another man in his place and he went to the Spindletop Power Company. Mr. Griffin had charge of connecting up the wells for either of these companies or both when he was in charge and he also had charge of the field operations for the Spindletop Power Company. Mr. Griffin was connected with the Palestine-Beaumont in its early days and he quit to go to the Spindletop Power Company a little while before we got to going but I could not tell you within a month or two of the time. At the time the air was used for the first time in order to make the well flow, the people in the oil business in the Spindletop believed generally that it would be successful and the oil men there generally asked for connections with our company. I think we equipped seventy five or one hundred wells. You see, this line, originally, was not to pump wells, but to agitate them and start them going and they would flow themselves after once agitated. That is the reason we could equip so many wells—after they ceased to flow, of course, we could not take on so many. If Mr. J. B. Tread-

well testified in this case and would say that he didn't know Mr. Griffin, of course, I would say that he made an error in his statement and when it is asked of me whether or not he was telling the truth when he said he didn't know Mr. Griffin, well, I would not want to put it that way, but then I know [2910] that Mr. Treadwell knew Mr. Griffin. If Mr. Griffin testified under oath that Mr. J. B. Treadwell solicited him to go out to California to drill some well I think I would believe Mr. Griffin's statement. If Mr. Treadwell solicited Mr. Griffin to go to California I would not necessarily know it. When I stated on direct examination that Mr. Treadwell did'nt solicit me so far as I can recollect, and that Mr. Griffin did'nt solicit me so far as I can recollect, to go to California under arrangements with Mr. Treadwell, I cannot state positively that Mr. Griffin did'nt talk with me about going to California; I don't remember if he did; of course, he might have done it. I have not the least idea of it. I don't think I ever heard Mr. Griffin called "Spindletop Griffin". It might have been used out there on the hill but not amongst the officers around town where I was.

Q It is in evidence here that Mr. Griffin had a business transaction with a man by the name of Armstrong, or his bank, in which Mr. Griffin is alleged to have given a trust deed of some property to secure the repayment of a loan of \$1500. It has also been claimed, although not proven, that Mr. Griffin mortgaged property that did'nt belong to him. Now, I will ask you, Mr. Bass, whether you know, as a mat-

ter of fact, that Mr. Griffin did go into business for himself and drill some wells, or attempt to drill some wells, after the failure of the Spindletop Power Company?

A Yes sir; he went into business for himself.
[2911]

I know where his property was located. I have been out there and have seen it. He had a drilling rig on it. He had some tanks there. I don't remember how big they were, also an earthern tank. I couldn't tell what the capacity of these tanks was. I should judge that they were tanks which would hold a thousand barrels. From my estimate of Mr. Griffin and my long familiarity with him in business I don't think he is the sort of man who would mortgage property that he didn't own to secure the payment of a note of a thousand or fifteen hundred dollars. I don't think he is that sort of a man from my estimate of him as a business man. I was in business with him about three years and he shared the fortunes, both good and bad, of the Spindletop Power Company during its existence and went down with me in the final failure. During all that time when I had good days and bad days, I have never known of a single instance in which Mr. Griffin ever tried to deceive me. He has always treated me fair and square. In the summer of 1903 Mr. Griffin laid the pipe line for the Rio Bravo Oil Company and I think that during the years 1902 and '03 he had issued to him annual passes by the Southern Pacific Company. If Mr. Griffin had been out of the State of Texas for from five to

fifteen days I would have known something about it; I would know he was away. He might have been gone from five to fifteen days at any time during those two years; he was gone a few times. He was absent a few times during the time he was with us. Of course some of those times I knew exactly where he was and others [2912] I did'nt. I have talked with Mr. Treadwell about the California oil fields in a general way while Mr. Treadwell was in San Francisco. When I am asked from my estimate of Mr. Griffin's ability in a mechanical way and his general efficiency and utility in the oil drilling business, whether or not Mr. Treadwell could have picked out any better man to go to California, I would say: "Well, of course, as I said before, I considered Mr. Griffin a very efficient man. Of course, there are other people who are efficient so far as that goes. At that time I did'nt know them on Spindletop. I know of no other man around Spindletop whom Mr. Treadwell could have picked out who would have been more valuable to go out to California oil fields at that time than Thomas J. Griffin. If Mr. Griffin would make the statement to me that Mr. Treadwell asked him to go out there at that time I would believe him. I have absolutely no interest in this case one way or the other and I have been approached for interviews for both sides of this case. [2913]

REDIRECT EXAMINATION
OF M. B. BASS.

I do not remember Mr. Treadwell making a proposition to go to California.

Mr. Griffin's services with me in the Spindletop Power Company were practically continuous; he went away a few times, once or twice, to Cincinnati, but I have no recollection of Mr. Griffin having made a trip to California during any of that period.

Immediately after the Spindletop Power Company went into the hands of a receiver, Griffin went over to Batson and began his independent drilling. I went to Batson and saw him there drilling and operating on a piece of land. I did not know of him making any trip to California during the period when he was operating the well at Batson, but would not know if he was absent.

Mr. Griffin laid a pipeline in the summer of 1903 for the Rio Bravo Oil Company. He had not obtained a leave of absence from the Spindletop Power Company for that purpose but it was done right there on the field, and he was there every day as far as I know; I did not know of him making a trip to California during that time. But I haven't the least idea about it. His salary with the Spindletop Power Company continued during the time of this work for the Rio Bravo Oil Company. I don't remember whether or not he had any interest in that contract. I don't remember whether he did that work for the Spindletop Power Company or whether he did it on his own account.

You show me a document, Defendants' Exhibit No. 187, being a bill to J. S. Wynn, dated Sour Lake, January 7, 31 1904, and signed at the bottom. The signature at the bottom looks like Mr. Griffin's handwrit-

ing; the "Griffin" part looks like it; it is sort of blurred there—the "O.K."; the "T.J." is blurred with the "O.K." The handwriting following, showing the date, looks like Mr. Griffin's handwriting.
[2914]

I think Mr. Griffin had a railroad pass in 1903; I myself had a pass for the year 1903.

The letter marked Defendants' Exhibit No. 188 which you now show me is signed by me, and the pass attached to the letter is the pass that I held during the year 1903, of the Sunset Route, between all stations, on account of oil contract.

(Said letter introduced in evidence, marked Defendants' Exhibit 188, and is as follows:)

"SPINDLE TOP POWER COMPANY, Incorporated, Capital Stock, \$100,000 AIR AND STEAM POWER.

Officers. P. O. Box 382

M. B. Bass, President

T. J. Griffin, V-Prest.& Gen'l Mgr.

B. R. Norvell, Treasurer.

Geo. A. Hill, Secretary.

M. J. Bass, Asst. Treasurer.

Directors.

M. B. Bass T. J. Griffin

Geo. A. Hill, B. R. Norvell

M. J. Bass

Offices: Beaumont, Sour Lake.

Beaumont, Texas, Dec. 30th, 1903.

C. H. Markham, Prest.,

Rio Bravo Oil Co.,

Houston, Texas.

Dear Sir:

I shall not ask to have my pass renewed for the moment, and I am desirous that you do not renew the passes of T. J. Griffin, Vice President and Geo. A. Hill, Sec'y of this company for good and sufficient reasons, of which I will inform you when I am in Houston again.

Yours truly, M.B.Bass."

(Pass attached:)

"1903 SUNSET ROUTE GOOD OVER ROADS
NAMED ON BACK

Pass Mr. M.B.Bass SUBJECT TO CONDI-
TIONS ON BACK

BETWEEN All Stations Account xx Oil con-
tract xxxxx Until Dec. 31st, 1903 UNLESS OTHER-
WISE ORDERED. [2915]

No. T5235 W. G. Van Vleck, Manager."

(On back) THIS TICKET IS GOOD BETWEEN
POINTS NAMED ON FACE OVER THE FOL-
LOWING LINES:

GALVESTON, HARRISBURG & SAN AN-
TONIO R'Y

TEXAS & NEW ORLEANS R'Y

NEW YORK, TEXAS & MEXICAN R'Y

GULF, WESTERN TEXAS & PACIFIC R'Y

GALVESTON, HOUSTON & NORTHERN
R'Y

“Is not Transferable, and the person receiving and using it assumes all risk of accident, and especially agrees that the above companies shall not be liable, under any circumstances, whether by negligence of their agents or otherwise, for any personal injury, or for any loss or injury to his property, and in using this ticket, he will not hold any of the above companies liable as common carriers.

Revocable at pleasure, and not good for passage unless signed in ink by person whose name appears on face. If presented by any other, conductor must take up and collect fare.

(SIGNED HERE)

M. B. Bass.”

One of the primary causes of the failure of the Spindletop Power Company was the litigation with the Texas Company. It added largely to it. After we failed to go around to the Texas Company we had an accident at the plant and were sued for twenty-five or thirty thousand dollars and although the case did not come to trial this suit accelerated the matter and there was a complication of troubles that brought on the receivership.

REDIRECT EXAMINATION

M. B. BASS

I have no remembrance of being consulted about any scheme to go to California and take up oil lands. I have no impression of it at all. I just don't remember it. I don't know whether my memory is a bad one in general; some people think it is. The [2916] relations between myself and Mr. Treadwell are perfect-

ly friendly and I have no reasons to do Mr. Treadwell any injury. If Mr. Griffin told me that in 1903 he had suggested the Treadwell conversation between himself and Mr. Treadwell, to me, and talked about going out to California and he would tell me something he had said to me and I had forgotten it I don't know how I would feel about it and as to believing it, well, in a manner I would say that he is honest in his statement; that he believed it at least.

RE-CROSS EXAMINATION OF M. B. BASS

I do not think it was due to any trouble with Mr. Griffin that I wrote the letter, Defendants' Exhibit No. 188; I stated to counsel for the defendants that when I knew of this letter I rummaged my head to find out what I really wanted, or what I intended to mean by the letter; but I can't recall now what I wanted to accomplish by that letter. There must have been something about the business I wanted to correct and I can't recall that I ever talked to Mr. Markham about it afterwards. It might have been due to the relations between Mr. Hill, the Secretary, and myself. When Mr. Hill came into the company we bought a large quantity of tankage, earthern tankage, from him after which we issued him a good big block of stock and it might have been there was something in regard to Mr. Hill in the premises that I didn't like or something like that. I don't remember, though, exactly. I can't conceive it now; I don't remember what it was for. I don't remember that there was

any difference between Mr. Griffin and Mr. Hill so far as that goes, but Mr. Hill once or twice tried to dominate the affairs of the company in some way and I didn't know but that it might be him and the reason I asked them to refuse the request of the issuance of a pass to Mr. Griffin would be that I might have wanted to explain the situation to Mr. Markham and let him go over it. Of course at this late day it is largely guess-work and I can't remember exactly what I intended when I wrote that letter. [2917]

F. I. NEVILL, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I live at Houston Heights, Texas, and have lived in Texas for about thirteen or fourteen years. From the 14th day of May, 1910, until the 21st day of June, 1913, I was engaged in drilling oil wells and producing oil in California, in the Midway district, around Taft, Maricopa and Fellows. I first engaged in the oil business in Texas about the year 1900. I operated in the Spindletop field in 1901 and 1902, and at Sour Lake, Batson, Humble and Markham, and was at that time acquainted with Thomas J. Griffin, and also knew Mr. Bass.

The first time that I met Griffin was the time the Palestine & Beaumont well got away from them, I think in 1902. I had business relations with the Spindletop Power Company in the fall of 1903, and Griffin was in the company at that time. I am familiar with Mr. Griffin's signature. I drew a check payable to

Thomas Griffin on the First National Bank of Sour Lake and delivered it to him on the 28th day of August, 1903, at Sour Lake.

(Said check introduced in evidence, marked Defendants' Exhibit No. 189, and is dated as follows:)

“Sour Lake, Texas, 8 - 28 1903”

(Endorsed) “Paid Aug. 28, 1903, T. J. Griffin.”

I had seen Griffin immediately prior to the 28th of August when this check was given him.

The check which you now show me, marked Defendants' [2918] Exhibit No. 190, dated, “Sour Lake, Texas, 11-9, 1903” and signed F. I. Nevill, and endorsed, “Paid Nov. 9, 1903, T.J.Griffin A.H. Liff,” I gave to Mr. Griffin while I was drilling wells at Sour Lake on the Rogers' property, for the J. M. Guffey Petroleum Company; I gave it personally to him, and delivered it on its date.

About the first of November, 1903, I opened negotiations with Mr. Griffin for the purchase of some property, and those negotiations continued from the first to the tenth of November. The deal was with the Spindletop Power Company, through Mr. Griffin. He agreed to complete a well on the property on a contract basis and went to work on it and continued to work on it until about Christmas 1903. While working on the well, Griffin was around the job off and on, sometimes once a day, sometimes twice, and was very much interested in the property and gave it very close attention. He completed the work on the well about Christmas, 1903.

The paper now shown me, consisting of two type-

written pages, is a notice that I received about the 14th of February, 1904, notifying me of the appointment of a receiver for the Spindletop Power Company. It is dated at Beaumont, Sour Lake, Beaumont, Texas, February 13th, 1904, and addressed to me, and is signed "S. N. Pickens, Receiver."

(Said document introduced in evidence, and marked Defendants' Exhibit No. 191.)

After receiving this letter I saw Mr. Griffin at Sour Lake, Beaumont and different places; he was around Sour Lake and made several trips over to Batson; from the time when the work was completed at Christmas up to the time when I received this written notice of the receivership, Mr. Griffin was around Sour Lake, Batson, and the community generally, and I saw him on and off all the time, sometimes as often as three times a day.

I signed a complaint in intervention dated the 27th day of January, 1905, now shown me, and entitled Beaumont National Bank [2919] versus Spindletop Power Company, setting out that the defendant executed and delivered to intervenor its two promissory notes, dated February 2nd, 1904, each for the sum of \$700.

(The original of said complaint introduced in evidence, and marked Defendants' Exhibit No. 192.)

After the giving of the notice referred to in the complaint in intervention on February 2, 1904, up to the time when I received the notice of receivership, I saw Griffin at Sour Lake, Beaumont and Batson frequently, sometimes every day; I kept right after

him, because I was in hopes that he was going to be successful in liquidating his company; Mr. Griffin was making every possible effort that he could, and I believe Mr. Bass too, was doing everything that they could to raise the money with which to liquidate the Spindletop Power Company and have the Receiver discharged and Mr. Griffin kept me posted, I think, pretty thoroughly, as to the progress he was making in the matter. He did not hesitate to discuss his business matters with me very thoroughly. He acknowledged the obligation to me and was always frank in answering any questions and in explaining the situation. I continued to see him probably for a month or six weeks after the appointment of the receiver; during the period of the negotiations Griffin was at Batson.

From the time of the contract of November 10, 1903, until the date of the receivership, February 13th, 1904, Griffin made no trip to California, to my knowledge; he could have done so, but not very well; it was possible, but not probable. I do not think he was gone as much as ten or twelve days at a time, and I never heard from any other source of his making a trip to California; I did not know of his making a trip to California during the time when I saw him subsequent to the receivership.

I was acquainted with the general reputation of Griffin at that time for truth and veracity, in that community. Oil men always [2920] discussed each other among themselves, and all the business men, as to a man's credit, and his truth and veracity, or to

what extent his statements would be credited and his promises be met; all those things were frequently discussed in the fraternity. During all the time that I knew Griffin. Of course, Mr. Griffin like all the rest of us, had his enemies — men that spoke disparagingly of him. Lots of men spoke very disparagingly of Mr. Griffin, in fact, almost universally men spoke disparagingly of him, and in my own dealings with Mr. Griffin my relations with him were very unsatisfactory. When you ask as to his general reputation, well, I guess you would call it bad. He was a fellow that was known to exaggerate his statements, and such as that.

CROSS-EXAMINATION OF F. I. NEVILL

I first entered into the employ of the Southern Pacific Company on the 22nd day of March, 1913. My compensation was to be a per diem agreement and expense account. That agreement is in writing but I don't think I have it with me. The agreement was that I was to make a trip to Texas at my earliest convenience and procure such documentary evidence as I had in connection with the suit that I had against the Spindletop Power Company and all other papers, etc., that is, everywhere I could find any papers. I wrote them that I had these papers in my safety deposit vault, but I only had a part of them. I agreed with the Southern Pacific Company, defendant, for a per diem arrangement and expense account, to come here and get those papers for their use in this case and

hunt for any other evidence that might be found which would possibly [2921] tend to show Mr. Griffin hadn't taken a trip to California. That was my employment or something to that effect. My per diem was to be five dollars a day. There was nothing said about expenses. My expenses consisted of hotel and living expenses and I traveled on a pass on that occasion. It was a special trip pass from Los Angeles to Houston and return. I have used a pass since that occasion. I used the first pass I got about the 26th day of March. My original deal with Mr. Lewers was made probably two or three weeks before that and I told him that I didn't know that I was going to be able to make the trip to Texas at all or not; that I was busy in California but the first time I could spare the time I would make this trip. The first time I used this pass was on the 26th of March of this year and on that occasion I went to Texas and returned. I remained in Houston until the first of May, sometime during the first of May. I made some side trips from Houston and went to Beaumont and Saratoga and Galveston. I went to Beaumont, I think, on the 23rd of April and I visited a good many different people. I visited people that I used to live with there, the Ellis family. That was a social visit. The people that I visited in a purely business way was the Oil Well Supply Company. They have stores all over the world and they have one in Beaumont. I talked with Mr. J. B. Lemmex there. I saw their records. I asked to see the records of the Oil Well Supply Company. I wanted to see whether the account of the

Spindletop Power Company was alive or not as that was in pursuance of my general plan and instructions to ascertain whether Mr. Griffin had any [2922] business with that company during those periods. I did not find any damning evidence against Mr. Griffin. I found nothing at all. Then I went to the National Supply Company at Beaumont. I talked with Mr. Byrne there who was the general manager. I was still in pursuit of the account of the Spindletop Power Company as that was part of my general plan and instructions from Mr. Lewers. I was looking to find whether or not the account of the Spindletop Power Company was alive and active during the fall of 1903 and the spring of 1904; to find whether or not Mr. Griffin had signed any papers, or documents or bills. I found nothing to damn Mr. Griffin there but I found that his credit was not good there. It had been good there as they had furnished goods to the Spindletop Power Company on previous occasions. I understand that the Spindletop Power Company had no credit after they failed but they did have credit up to a certain time before they failed. I next visited the E. L. Wilson Hardware Company in Beaumont still trying to find if they had an active account with that company. I did not find anything there that would satisfy Mr. Lewers in searching after evidence against Mr. Griffin. I just left word there that I wanted a copy of the account and I didn't hear from them any more afterwards. I next went to the County Court House. I found papers there that showed where Mr. Griffin was. I think those are the papers which

I introduced here. I found all the papers in the case of the Beaumont National Bank against the Spindletop Power Company. The Beaumont National Bank threw the Spindletop [2923] Power Company into the hands of a receiver. I collected data there. I next went to see Judge J. S. Whelos, who acted as master in chancery in the case of the Beaumont National Bank against the Spindletop Power Company and I got data from him. I next visited the attorneys that represented the receiver in the case. These attorneys were Smith, Crawford & Sonefield of Beaumont. I believe I talked with Mr. Crawford but he didn't give me any papers and did not give me any information as to the movements of Mr. Griffin. I think that is all I did there in Beaumont. I think I spent a week there. I then went to Houston. I think I called on the Pierce, Fordyce Oil Company. I did not find any papers there that damned Mr. Griffin as that was the wrong place. The next day I went to Galveston and there I visited several of the old boys that I knew at the old field. The first fellow was a man by the name of Harrington. I never mentioned this case or Mr. Griffin to him. I was with him probably five minutes. I next met Slim Johnston and had a conversation with him but I didn't talk to him about the movements of Mr. Griffin. I was with him probably ten minutes. I next went to the depot to go back to Houston and then I went home. I lived at Houston Heights. I never lived in California. I was just out there temporarily. I was in California three years drilling and producing oil. My family was not with me in

California. I lived at the Buena Vista Hotel at Taft. I was also at Fellows. Mr. Lewers of the Southern Pacific found me at Los Angeles. I met him by appointment at the [2924] Alexandria Hotel. Mr. Gray made the arrangements. Mr. Gray was present at that interview. Mr. Gray did not offer me inducements to take employment as a detective for the Southern Pacific Company at that time. He just took me over to meet Mr. Lewers. He said he wanted to see me in connection with this case. At that time I was working on a well at Fullerton and I was receiving ten dollars a day and a bonus of several hundred dollars for certain results and the reason I left this lucrative employment was I had to wait for material to come from the East and my pay didn't go on while I was waiting and so while I was waiting I notified Mr. Lewers that I had not been home for ten months and I would make the trip for him. I remained at Houston Heights about one week. I visited nobody there on official business connected with the Spindletop Power Company and my relations with the Southern Pacific Company, my pay, was going on all the time at five dollars a day. My last payment was about a month ago. I was paid by a check which included my expenses and per diem. My last check was about one hundred dollars and included some expenses. I have had three or four checks altogether from the Southern Pacific Company, all of them less than one hundred dollars. I just charged them for the time I put in. I supposed I was to come and testify and tell what I knew within the terms of

my contract. The last time I went to Texas I went on my own business and traveled on a pass on that occasion. The pass took me to Houston and was issued to me by the railroad company. It came to me by mail from the San Francisco office. I got it in [2925] Los Angeles. I was to do certain things for them when I got to Houston but when I got there I didn't have the time. My own business consumed all my time. I have not yet returned to California. Since I have been here I have visited Mr. Lewers and discussed the case with him in his room. I was there once last night, that is the only time. When I went to Sour Lake I had probably a couple of thousand dollars. I never gauged any oil at Sour Lake or Spindletop. I went to Sour Lake about the first of June, 1903. I was in Houston on April 16th, 1913. I met Mr. Griffin at that time in company with Mr. Flocker and at that time Mr. Griffin charged me with stealing oil from him while I was gauging. He said to me, "supposing you had the money representing the oil you stole on Spindletop, you would have lots of money now". I remember his saying that to me but I never answered, "Yes, I got my part of it". He never said to me, "You never stole less than fifty to a hundred thousand barrels from me on Spindletop", and I did not reply, "I didn't get it in person, but I don't say what my gaugers did." I deny that I had ever stolen oil while I was a gauger. I called Griffin's attention to the fact that I never gauged any of his oil and I did deny that I had stolen thousands of barrels of oil from other people. I never stole from Mr. Griffin

and Mr. Bass, either personally or by others, as much as 50,000 barrels of oil during the time I was gauging there. I never stole any oil from either of these men or from the Spindletop Power Company. I had some trouble with my partner, Mr. Armstrong when I was there. We got into a controversy over loss by fire in Batson. We both sued each other. We both [2926] got judgment against each other. We settled the matter. I had a little trouble with my partner, H. H. Cherry. We had a misunderstanding but never went to court about it. I testified that I saw Mr. Griffin frequently subsequent to February 14, 1904. I don't know where I saw him on February 15th or 17th or 16th. I don't know as I saw him on those particular days. I think I saw him both at Sour Lake and Batson but I will not try to say the date. I would not swear positively that I saw him on the 18th of February at Sour Lake or Batson, or on the 19th of February, or on the 20th day of February, or the 21st, or 22nd, or 23rd, or 24th, or the 25th. I saw Mr. Griffin several times and I believe I saw him at Beaumont after that because I know I was very anxious in communicating with him as to what the outcome might be of the receivership case. I am almost sure that I saw him at Beaumont two or three days subsequent to the appointment of a receiver. I can't give you the positive time and date but I know I was in communication with him constantly after the appointment of a receiver. I do not know whether Mr. Griffin was gone from Texas into the State of Ohio for a period of from twelve to fifteen days. I don't think he could

have gone and I not know it, that is, within the next fifteen days succeeding the appointment of the receiver. He might have been gone sometime during the years 1903 and '04. I did not make it my business to follow around and see where Griffin was during the years 1903 and '04. I had other things to do. I had other business besides business with the Spindletop Power Company. I cannot swear as to any specific date when [2927] I saw Mr. Griffin at any place in Texas in 1903 or '04 except the occasion when I gave him the check. I know I was with him in 1903 for nearly every day from the first of November until the 10th and I was with him on the 19th. We were negotiating this deal for this exchange and I saw him most every day. I am not positive, however; I know I saw him on the 10th of November and on the 11th and I saw him on Christmas and on the 24th of December, 1903. I can't fix the exact dates on which I saw him between the 10th of November and the 25th of December. I can only fix those dates which are fixed by some particular circumstance. I saw him on the 11th of November, the day he took possession of the property, and on the 24th day of December, the day the pipe-pulling arrangement was made. I know where Mr. Griffin was some of the time during the spring of 1904 but I cannot give any precise dates and places except on occasions that I had business with him. I saw him on the first and second of February, 1904. I call February the spring of 1904. February is generally called the spring in Texas. I next saw him about the 13th of February at Beaumont. I cannot

positively fix any other dates. During the months of June, July and August of 1904 I was most of the time at Batson. I did not see Mr. Griffin there. He was not around there that I recollect. I was very busy with my own work; he may have been there but I don't recollect seeing him at that time. I followed him for awhile after the receivership while he was trying to raise the money to liquidate his company and when I despaired of his being able to raise it I didn't pay any more attention to him. As to my [2928] reputation for truth and veracity at Sour Lake and Spindletop, I expect, like everybody else, I have my enemies that speak disparagingly of me and my friends speak otherwise. A man generally judges of his reputation by the credit he has; if his credit is good he has a good reputation. If he loses his reputation his credit becomes bad. A man can't lose his credit if he keeps up his reputation. The Spindletop Power Company didn't have any credit after it went into the hands of a receiver, only through the receiver. I have not a general reputation in the Spindletop field among those who know me, as of stealing oil as a gauger. If a man's partner speaks well of him I think that is a pretty fair test. If a man has business dealings with you that is a better test than what other people say.

RE-DIRECT EXAMINATION.

I had unlimited credit in Sour Lake and Beaumont. Mr. Griffin was in Sour Lake on August 28, 1903, according to this Exhibit 189. I saw him on

that date and gave him that check myself. I don't recollect any special occasion that I saw him after that until we opened negotiations on the first of November, 1903, for the sale of this property. The negotiations between Mr. Griffin and myself, were before the giving of these notes on the 2nd of February, 1904, I was after him hard all the time for my money and I kept in constant communication with him at Sour Lake and Beaumont. He was not absent at any time between the completion of the well and the 2nd of February, 1904, to my knowledge. I [2929] don't think he was for any length of time because I was right behind him all the time punching him up for my money.

E. A. STERLING, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

I am fifty-seven years old, and live in Houston, and have lived there off and on for fifteen years; I went to Beaumont in 1901 and remained there until 1905; I am engaged in buying and selling oil, and operate quite extensively; at the present time I have oil lands at Saratoga, and in Oklahoma, and in different parts of the State. At the time I lived at Beaumont and Spindletop I was acquainted with Thomas J. Griffin, and knew him all the time he was there; I knew of his general reputation in the community for truth and veracity; it was not good. I have had no difficulties of any kind with Mr. Griffin, and have no feelings in this matter at all.

CROSS EXAMINATION
OF E. A. STERLING

Before I went to Bakersfield in 1901 I lived at Temple, Texas, and was a railroad agent for the Santa Fe. I was there ten or twelve years I guess, altogether. I left there and went back — shifting around. Before I went to Temple, Texas, I was in Belton, Morgan, Crawford; different points. When I was at Belton I was in the railroad business with the Santa Fe Railroad. Before that I was an operator in the Western Union here. The Morgan line is a line of steamboats. I was a cashier and operator at Clinton, on the bayou. Before that I was a telegraph operator in Houston. I remember the Buffalo Oil Company for which I was a sales-agent, employed Mr. Griffin and he blew some wells for them but I don't know how many. That was strictly a field proposition. I believe that Mr. Griffin blew a well over there while I was sales agent [2930] of the Buffalo Company. I don't think their plant could handle it and he coupled on to them and when you ask me if, as a matter of fact, if I did not get Mr. Griffin to flow an oil well for that company over there which was really a mud hole and which I was trying to unload on another party as an oil well, my answer is, "No sir, I had nothing to do with the bunco side of that business", and when you ask me if Mr. Griffin had communicated to the party I was trying to sell the well to, the fact that it was a [2931] mud hole and the party didn't take the well, didn't I get extremely angry

with Mr. Griffin, my answer is, "No, sir." That was not the beginning of my trouble with Mr. Griffin. I never had any trouble with Mr. Griffin. Mr. Griffin did not refuse to have any business dealings with me after that time in the field. He never had any chance to do any business with me. Mr. Griffin did not require me to have my business go through the office. I never had any talk with M. B. Bass about the transaction I referred to in regard to the well. I know the Moore & Skinner syndicate. They were in the business, principally, of selling stock. I did not at one time attempt to take some cars of theirs loaded with oil, get the bills of lading and reissue them in order to defraud the company of the oil, and sell it myself. I never had any trouble with Jim E. Moore of the Moore-Skiner syndicate, at all. I did not make such an attempt and sale nor did I attempt to re-route some cars loaded with oil under the guise of its being my own oil. You understand, in my capacity I had nothing to do with field work. The bills of lading came into the office. I did not attempt to take oil that didn't belong to me from the Moore-Skiner syndicate. I didn't have anything to do until the bill of lading reached my desk. I had an adopted daughter who married a street car conductor. She had some domestic troubles with her husband in which she left and I would not let her come back to my family. I don't know whether she went to live with Mrs. Griffin. I don't know who she went to. Mr. Griffin's wife did not, out of sympathy, [2932] take the girl in and Mr. Griffin did not go over and accuse me of being very

hard-hearted to the child. He never opened his mouth to me about it. The girl went bad on her own account while she was living with this conductor and because of that I certainly did refuse to take her back to my house. She afterwards went to live in a house of prostitution. She "turned out" of her own accord. It was not due to lack of humane feelings towards my adopted daughter, not on your life. It was born in her. It was not because Mr. Griffin and his family befriended this child and his accusing me of lack of humane feelings in respect to that—the real cause why I am here to day. Not on your life. This is the first time I ever heard that Mr. Griffin ever had anything to do with it. I never heard that Mrs. Griffin took that child in and befriended her. She married and left my roof; I had raised her; that was her own doing and I certainly refused to have her come back to the house. We took her away from her—my wife's folks turned her over to us, and we raised her from her mother, who was a prostitute. Mr. Griffin did not tell me that my treatment was inhumane. He never opened his mouth to me about it. He did not tell me that I ought to take this girl back and try to redeem her. Mr. Griffin never mentioned that girl to me in his life, nor did his wife. [2933]

I never had any trouble with Mr. Griffin.

RE-DIRECT EXAMINATION
OF E. A. STERLING

I never had a pass on the Southern Pacific; I have

a pass on the Santa Fe, and that is the only one I ever carried. [2934]

A. C. DENNEE, a witness called and sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION.

I am a traveling man, and reside in New Orleans; about the middle of November, 1901, I was in the employ of the Sunset lines in Texas and then went over to the H. & T. C., which is a subsidiary line of the Southern Pacific, and remained in their employ until 1907 or 1908. During 1904 I acted in the capacity of clerk of W. G. Van Vleck, and was then second vice president and manager of the G. H. & S. A. Railroad and the T. & N. O. Railroad, — what is known as the Sunset route.

As clerk I handled the annual pass records. By that I mean that all of the requests that were sent in for annual passes from foreign lines or company officials, after they had been o.k'd by the proper officials, were passed up to me and I issued the passes. I kept a record of the passes issued by other people, and these were reported to my office by letter, that is, in most cases. I would not undertake to swear that all passes, that is, blank passes that were turned out to other officials of the company were turned in to me for report. Of course all of those issued by me, I presume, were of record. My office issued blank passes only to the Vice President's office on request, that is, they may have sent in a letter and asked for fifty or a hundred

passes. They were sent in blank. As to the serial numbers, I merely kept a record of the serial number as the passes were issued by the vice-president's office and when those returns came in I entered them in the register, so the records of passes issued would be absolutely complete, that is, so far as I know.

The book which you show me is the indexes to the annual passes issued by the Texas line, the Sunset Route, during the year 1904, and all the entries are in my handwriting; some of the passes were divided into classes, which were called foreign [2935] exchange passes. The foreign exchange passes represented cards printed to interchange with other lines of railroad; also at that time miscellaneous, issued "complimentary" to so-and-so. This record also represents passes issued to employees of the company; I have made an examination of the record of miscellaneous passes in that book; they are arranged alphabetically; I find there a pass issued to Thomas J. Griffin account of the Rio Bravo Oil Company on page 245, under the letter "G", and the pass shows that it was bulletined; I can determine what the original number of the pass entry was, and have looked at it with a glass; it states that the number represented there is 3850, and the entry is in my handwriting, made at the time the pass was issued during the year 1904; I have also examined the record of miscellaneous passes to determine whether or not the name of T. J. Griffin appears in relation to this, but failed to find any entry although I went over it very slowly, sheet by sheet.

Reading the entire record, as appearing on page 245, referring to the pass issued to T. J. Griffin, the number of the pass is T-3858, under the "date sent", my entry shows Mr. Fay's letter June 9th, 1904—6/9/04; Name, T. J. Griffin, G-r-i-f-f-i-n; Account, Rio Bravo Oil Company; Expires, December 31, 1904—12/31/04; Good between, all stations; Requested by, T. F. The "T. F." was placed there because the letter requested the pass and was signed by Mr. Fay. On the line of the entry something is written in red ink; I made the entry, and it reads, Bulletined, November 10th, 1904—11/10/04. The expression "Bulletined" means, in my understanding, that the pass was outlawed, and in case it was presented for transportation it should be taken up by the conductor; When we bulletined a pass, that is, when I was in the employ of the company, it is my understanding that we wrote to all superintendents—in fact I wrote the letter myself on the machine—bulletining the pass; the same procedure goes through in the case [2936] of other passes. I identify the signature of a letter addressed to Mr. Fay, General Manager, Houston, Texas, as being the signature of W. L. Lane, Mr. Van Vleck's chief clerk, and am familiar with his handwriting.

On the letter now shown me attached to the same file, I have seen the signature before,—E. T. Dumble; my attention being called to two carbons attached between two letters or papers, and upon my attention being called to the initials appearing on those letters, so far as the initials "G.R." would stand for any per-

son,—the point that I wish to make is that “G.R.” is Gaspar Rodeski”, at that time Mr. Fay’s chief clerk. Mr. Fay was vice president and general manager of the Sunset lines, and he became general manager along about April, 1903.

(Said letters introduced in evidence, and marked Defendants’ Exhibits 193.) Said letters are as follows:

“Form 101

THE GALVESTON, HARRISBURG & SAN
ANTONIO RAILWAY CO.
SOUTHERN PACIFIC
SUNSET ROUTE

HOUSTON, TEXAS, November 10th, 1904.

(In blue pencil: 967)

W. G. Van Vleck,
Second Vice-President
and Manager.

Mr. T. Fay,
General Manager,
Houston, Texas.

Dear Sir:

Replying to your letter of November 9th, file No. 967, beg to advise you that necessary instructions have been issued regarding Sunset Route annual pass No. T.3858, issued to T. J. Griffin. Yours truly, W. G. Van Vleck. M. [2937]

Houston, Texas, November 9, 1904.

Transportation T. J. Griffin. (Stamped: In your reply please refer to our file No. 967)

Mr. E. B. Cushing,
Gen. Supt., New Orleans.

Dear Sir:—

Mr. T. J. Griffin is no longer in the employ of the Rio Bravo Oil Company. He has failed to turn in his annual, No. 1604, good over Louisiana lines. Please bulletin and have taken up if presented for passage. Yours truly,
GR:

“Houston, Texas, November 9th, 1904.

Stamped: In your reply, please refer to our

File No. 967.)

Transportation T. J. Griffin,

Mr. W. G. Van Vlerk,
Manager, Building.

Dear Sir:

Mr. T. J. Griffin is no longer in the employ of the Rio Bravo Oil Company. He has failed to turn in his annual, T 3858, good over lines in Texas. Please bulletin and have taken up if presented for passage. Yours truly,
GR:

Form 1.

THORNWELL FAY, RIO BRAVO OIL

PRESIDENT. COMPANY, (In ink :967)

E. T. Dumble, General Office

Vice President HOUSTON, TEXAS.

C. B. SEGER,

Secretary Houston, Texas, Nov. 8th, 1904. [2938]

B. C. Cushman,

Treasurer.

Transportation :

Mr. T. Fay,

President, City.

Dear Sir:—

Mr. T. J. Griffin, who holds transportation over our lines in Louisiana and Texas, is no longer in the employ of the Company. He has failed to turn in his transportation and I would suggest that it be taken up when presented. No. T-3835 Lines in Texas. 1604 Over Louisiana Lines.

Yours truly, E. T. Dumble."

I have gone over the miscellaneous portions of the pass record, and went through the exchange portion with relation to the pass 3500, and looked through for a pass for Mr. Griffin, but I failed to find the name T. J. Griffin in the Southern Pacific Exchange book. This book does not contain all of the trip passes that were issued. It does not contain any of the trip passes. It may contain in the book the numbers of some of the trip passes sent out but I don't know whether it does or not. There may be hundreds

of those trip passes issued in that year that would not be in this book at all. Examining this entry which constitutes the offer of defendants' counsel on page 245 of the index of passes, upon which I have used a magnifying glass, it appears that the number 3858 has been superimposed over a number different and other than that. It also appears where the name "Mr. Fay's letter" occurs in the entry, under "date sent", that there evidently was a date under that and it does appear under that particular writing that there was some other writing and then, under the "date 6/9/04", in the same column it appears some [2939] writing has been eradicated and another writing has been superimposed. It also appears under the name "T. J. Griffin" that there has been some other writing eradicated and the name of "T. J. Griffin" superimposed. I have no record or any means of stating and I know nothing of it, whether or not any trip pass was issued to Mr. T. J. Griffin on a trip to California with Mr. E. T. Dumble at any time during the year 1903 or 1904 and from the records to which my attention has been directed, I don't know whether or not such a pass was ever issued to Mr. Griffin and it is possible that it might have issued and I not know it. I don't recall any annual pass being issued to T. J. Griffin prior to June 9, 1904. I am unable to find any record of any. If it was issued in Mr. Van Vleck's office I certainly would have a record. Of course if it was issued by anybody else naturally the record would go to Mr. Van Vleck's office if it was an annual pass. That was the general man-

ner of handling those passes. If any came to our office prior to that date I didn't see it. I kept a first class account of every annual pass that was ever issued by me or reported to me.

The record shows that the passes in which the serial number 3858 occurred were sent to Mr. Markham's office, and reads:

"Mr. Markham's office. Serial numbers 3800. Sunset Route, annual passes, numbers T-3800 to 3899, inclusive, to Mr. C. H. Markham, for his use, January 6, 1904. No. 3858 comes in that series.

I have examined Form 110 referring to employees, and there is no record of any pass being issued to T. J. Griffin in the year 1904 in that record.

On December 16, 1903, we sent a hundred blank Sunset route annual passes, numbered T-2100 to T-2199, inclusive, to C. H. Markham for use of Mr. J. Kruttschnitt. Those were 1904 annual passes. On December 18th, 1903, we sent to C. H. Markham [2940] fifty blank passes, numbered T-2047 to T-2096 inclusive, for his use and on January 6, 1904, we sent to C. H. Markham one hundred blank annual passes numbered T-3800 to T-3899 inclusive, for his use and on January 17, 1904, we sent to C. H. Markham fifty blank annual passes, numbered T-4000 to T 4049 inclusive, for the use of Alex Miller, who, I understand, was the Secretary or Assistant Secretary of the Southern Pacific or Sunset Route. Mr. Markham did send us reports from time to time showing the passes he had issued. He would also send us the reports from time to time showing the passes Mr. Kruttsch-

nitt issued, in other words, issued from the New York office. Of course, what those passes are I am not in a position to state now because I have forgotten. The reports made to the Railroad Commission were made by me and the records of the reports were obtained from the record here. At the end of each month all the reports to the Railroad Commission were taken right from the originals.

CROSS-EXAMINATION

of

A. C. DENNEE.

I did not testify that no annual pass was issued to Mr. Griffin for the year 1903, but I said it was 1904; I have no record of any being issued and have not brought in the record of 1903 at all. As to these passes which have been issued and as to which I had no advice, I am unable to state whether they were outstanding at the time or not.

I couldn't say if all the blank passes we sent out have come back and been listed in this book. Some of them have and some of them may not and when we send out blank passes, fifty to a hundred at a time to the account of Mr. Markham or Mr. Kruttschnitt or some other official we have only the record which we have been advised were issued and as to those passes which may [2941] have been issued and as to which no advice was sent us I am unable to state whether they were outstanding at that time. I don't know whether there is any record of whether they were issued or not. In other words, I mean to say that

on a certain day in 1904 there were passes issued, we will say, from 3800 to 3899 to C. H. Markham for his use and I don't know and am unable to state on my oath whether any or all of those passes have been issued and are on this record and that is true as to every blank pass sent out. The blank passes were handled in the following manner: Mr. Markham wrote to Mr. Van Vleck, "Send me a hundred passes", or sent his chief clerk in there, and I would be instructed by Mr. Lane, or Mr. Van Vleck, or whoever was in authority, to give them a hundred passes, and Mr. Markham, or whoever the passes were sent to, was supposed to advise us when the passes were issued. It is my understanding that we were supposed to get a report on every pass that was issued by Mr. Markham, or anybody else.

I was merely acting in the capacity of clerk. I was not a man in authority or anything of that kind and I had to do as I was told. There appears upon this page that you call my attention to for the year 1904, three hundred blank annual passes issued for the use of C. H. Markham and Mr. J. Kruttschnitt and the only ones that I can see that were issued were those we find the record on. Whether there have been any of those serial numbers issued without a report made I am unable to say. I am unable to say that such a thing is possible, that some annual passes may have been issued by those persons to whom they were sent in blank and I may have no record whatever of them. I am unable to specifically state that a pass

was not issued to Mr. Griffin by one of those gentlemen to whom blank passes were issued.

REDIRECT EXAMINATION

of

A. C. DENNEE.

When the blank pass was sent out, we would merely keep [2942] a record of it at that time. When Mr. Markham, or whoever the passes were issued to,—when we got our instructions from Mr. Markham, we would naturally get a report on the passes from him. As he gave us the reports we entered them in the register, the same way after Mr. Fay became Vice-President—June 9th, or whatever it was, if they issued the passes and failed to report them, I would not get any record, that is, I never learned of any instance in which that was done. They usually reported very promptly on the passes issued; if they issued any passes and did not report them, they being superior officers, I was not in a position to raise any complaint, but I knew of no instance when they issued passes that they did not report. [2943]

DAN M. JACKSON

Called in behalf of Plaintiff in Rebuttal of Defendants' evidence for impeachment of Thomas J. Griffin.

Houston, Texas, August 1, 1913.

Direct Examination.

I was born at West Falls, Texas. I am judge of the Thirty-fourth Judicial District, in Texas, comprising the counties of El Paso and Culberson. It is

a court of general jurisdiction in criminal matters, and tries all felony cases; and in civil matters, all matters where the matter in controversy is over \$500. I was elected judge of that district, and have held two appointive offices there. In 1906 I was appointed assistant city attorney of El Paso, to prosecute in the police court, and subsequently was appointed assistant district attorney under Judge Estes, in the district attorney's office there; I was elected city attorney of Marlin, Falls County, Texas, just after leaving the university, probably in 1899 or 1900. I was a claim agent of the Texas & New Orleans railroad, and Houston was my headquarters; I was connected with that company for about two years, in 1901 to 1903, or from 1902 to 1904, I cannot recollect.

I knew Thomas J. Griffin, and have known him all my life; I first became acquainted with him in Falls County, near Mooresville, Texas; I knew his sister very well, Mrs. W. D. Thomas, and boarded with the family in Marlin all the time I was there; Griffin went to Galveston along about 1900, probably in 1899; subsequently, while working for the Southern Pacific Railroad Company, I saw Griffin in Spindletop and Sour Lake; he was a man of some prominence in Spindletop; I was acquainted with his general reputation in the communities in which I knew him, for truth, veracity, honesty and integrity, and it was good; I was better acquainted with his reputation at Marlin than anywhere else, because I knew more about him, and saw him, and had better opportunities to observe him there than in Beaumont;

at Beaumont and Sour Lake I would only see Mr. Griffin probably a few hours at a time; I was very much better acquainted with his reputation at Marlin or Falls County; if he had had a reputation other than that which was good I would have known it.

CROSS EXAMINATION OF DAN M. JACKSON

After I was admitted to the bar, I began practising law at Marlin, and remained there until 1901 or 1902; Mr. Griffin was not a client of mine at the time; he was living at Galveston, which is 250 miles from Marlin; the relationship between his family and myself was quite friendly, but I have not seen Thomas J. Griffin but once in nine years; I never lived at Beaumont,, or at Spindletop, or at Sour Lake, or Batson; I have not seen him since I left Houston, nine years ago; I left Houston either in 1903 or 1904, but cannot fix the date definitely; I cannot recall whether it was in the spring of 1904 or 1903 that I went to El Paso.

Prior to the time I left the service of the Texas & New Orleans to go to El Paso, I cannot recall how often I went to Beaumont or Spindletop, but was there very often, and had a great deal of litigation there; I was not at Sour Lake as often as at Spindletop; was at Sour Lake probably once or twice a month; as well as I recollect. I think I saw Griffin on all of the trips I made to Beaumont.

Griffin was a free talker, a rapid talker, and talked a great deal; I think he talked more than the average

man; he was what I would call a free talker, by which I mean that he was a rapid talker and talked a great deal.

During the time I knew Griffin at Beaumont, Spindletop, or Sour Lake, I did not know of his taking a trip to California; he never told me he took a trip to California. I know that he lives there; he told me so last April. I didn't know he lived there until last April. [2945]

REDIRECT EXAMINATION

The fact that Mr. Griffin was a free talker does not at all have any influence on my estimate of his credibility and his honesty and integrity, nor would it have any influence of any kind in the matter of my belief as to his word, nor does it, in my opinion, from what I know of him and his general reputation, in any way affect that general reputation for truth and veracity. I never had any business dealings with Mr. Griffin in my life.

J. R. PARKS, a witness called and sworn on behalf of the plaintiff, in rebuttal testified as follows:

DIRECT EXAMINATION

I reside at 3515 Main street, Houston, Texas, and at present in real estate and life insurance business at Houston, having lived there eight and one-half years; I am also engaged in the home building business; president of it and still own it, but not actively engaged in building at present. The business of the company is building homes; and am associated with

the Great Southern Life Insurance company as agency director and solicitor. My age is 51 years.

When the boom was on at Spindletop I went to Beaumont and organized a company, and went into the oil production business there: I know practically all the oil men in the various places, and know the Spindletop Power Company; I know that Thomas J. Griffin was the general manager of the company; he was one of the first men I met at Spindletop; I knew Griffin very well, and saw him every day; I do not remember having heard his character for veracity discussed pro and con at that time, whether it was good or bad; if he was a bad man I did not know it, as I never heard anyone say so; from my acquaintance, as far as I know, his reputation for truth and veracity was good in Spindletop, Sour Lake and Batson; I never heard anything to the contrary. It stands to reason, being sufficiently identified with my interests there and intimately [2946] acquainted with the business affairs of those communities to the extent that if his reputation had been bad, I would have known it.

CROSS-EXAMINATION OF J. R. PARKS

I have not seen Griffin this year at any time except within the last day or two, and when I met him yesterday I did not know him; he is not connected or in any way employed with any of the properties with which I am connected. I was speculating in oil lands.

After the wells ceased to produce in 1903, I went

to Sour Lake and took another whirl at the oil business, but was not successful; I then moved to Batson, where I insured Griffin's life, when he was operating at Sour Lake.

I met Mr. Griffin in 1901 at Beaumont and Spindletop, but was never associated with him in business; I was with him more or less three days out of a week, going to and from the fields, riding either in a hack or on the railroad, with him and others, not especially Griffin; I lived at Beaumont, and he lived there also, at the time; I was frequently with him at that time; up to the time Mr. Griffin left Texas, I was frequently with him, but was never quite intimate enough to collect a little bill that he owed me; he owed me some money on life insurance; he has not paid me yet, but I believe though today that he will pay me when he can; that has been a good many years ago and I don't remember whether or not I ever made a demand upon him for the payment; I expect I did; I collected the most of it. I hope to get the balance. I don't say that under those circumstances I would be very glad to do any favor to Mr. Griffin in order to get that money because it is insignificant; it don't amount to a great deal. He paid the most of it. The little amount he owed me would not change my opinion one way or the other on Mr. Griffin.

When I met Mr. Griffin the other day I said to him, "Don't you owe me a little balance on that last insurance?" He replied, "Maybe [2947] I do; it has been a good while since I saw you, and my mind is not clear

on it. Maybe I do." I said, "I am not altogether clear, but I think you do owe me a little balance", and he said he would pay it. He said nothing in that conversation about my testifying as to his character. The first to ask about my testifying as to Mr. Griffin's character was Mr. Flocker, the brown-eyed gentleman, and that was yesterday, and I think I saw Mr. Flocker afterwards.

I saw Mr. Griffin in the Chronicle Building yesterday, in the forenoon, and Mr. Flocker was there in the forenoon; Mr. Flocker was there first, and Griffin followed within an hour; I think that I told Mr. Flocker that Griffin owed me a small amount of money.

I never heard Griffin's reputation discussed excepting during the last few hours; I regard him as rather a windy fellow; he is a free talker; when I am asked if he was rather windy, I would say yes sir; I would put it that way - that is, entertainingly. I don't know that he would maliciously — I never heard him accused of making any exaggerated statements; but when Mr. Griffin had success, he blowed a good deal about it and he put up a pretty good front and I should say he did talk a good deal about what he was doing. He was not a pessimist, but he was an optimistical fellow. We generally talked when we were together. He never bored me to death; but he was a good talker — a good entertainer. I could not say that he had a general reputation for being windy; that was my impression.

J. R. CHEEK, a witness called and sworn on behalf of the plaintiff, in rebuttal testified as follows:

DIRECT EXAMINATION

I live at Houston, and have lived there about four and a half years; am engaged in the subdivision business, handling Magnolia and Central Park real estate; my corporation, known as the Magnolia Tract Land Company, has one thousand acres between Houston and the [2948] head of navigation along the Harrisburg road. We cut it up into blocks and are retailing it out. We have sold something over two million dollars worth of property from this so far. I am president of the company and own practically half of the capital stock, amounting to \$300,000.00. I am president also of the Manchester Corporation, which owns four hundred and fifty acres of land adjoining Harrisburg and known as "Manchester". Its capital stock is \$200,000.00 and I practically own that company. It is not doing any active business in the sale of real estate. It is just a holding company at present. We value that land at \$750.00 an acre, which is the present market price. I am also Secretary of the Viaduct Land Company, which is a real estate business and a holding concern. The amount of capital stock of that company is \$100,000.00 and I own one-third of the stock. It owns two hundred and sixty acres of land north of the Fifth Ward and the land is worth from \$400.00 to \$500.00 an acre. I was engaged in the oil business at Spindletop, Sour Lake, Batson and Humble, beginning at Spindletop, in 1901, and up to 1908 at Humble.

I was operating there for myself in all of those

places. I had several wells at Spindletop. I drilled several wells there and they were producing. I never produced very much oil at Spindletop as there was no outlet for the oil. I produced oil at Sour Lake, Batson and Humble. I had half a dozen wells at Sour Lake and they were all producing. The highest production I had there was about nine hundred barrels per day from all these wells. I operated those wells four or five years. They were on my own property. We had eight wells at Batson that I was interested in with others. I would estimate that we had a production of six or seven hundred barrels per day there for a while. We operated there for about a year. I have also operated wells at Humble. I was interested in [2949] three or four producing wells there and I own some property there now. The highest production we ever got from the Humble wells was three hundred barrels a day, but we had a good gas production there for a while. I knew a man at Spindletop by the name of Thomas J. Griffin. I knew him at Galveston before he went to Spindletop, but I became intimately acquainted with him at Spindletop. He was connected with the Palestine Power Company. I don't know whether it was called the Palestine-Beaumont Power Company or not. I know that Mr. Bass was associated with Mr. Griffin and there was also a man named Bird. I knew Mr. Griffin well during those years. I knew him quite well at Spindletop. He had an office there on Spindletop Avenue and we used to get him to do some work for us. He

pulled pipe out of the wells and furnished compressed air and power. He was an active man in the field when I knew him. He was right on the job there all the time. I think he was the manager, as he was the man that I had the most to do with when I went there — he and Bird. I found when I had business relations with him that he was a man whose word could be relied upon in the matter of business. I was well acquainted with a good many business men in those several towns in which I was operating during that period. There were a great number at Spindletop that I didn't know, but I knew some of them, and when you ask me if I knew the general reputation of Thomas J. Griffin for veracity and honesty and integrity and truth in that community of Spindletop while I was operating there, I will say I never heard anybody say anything against him at all. I was [2950] in a position to know what his general reputation was there. I think I do. I knew a good many people there of his acquaintance and they all spoke well of him. Mr. Griffin's reputation for truth and veracity, honesty and integrity was good in every community in which I knew him. I have never heard his reputation for evil discussed in any way.

CROSS-EXAMINATION OF J. R. CHEEK

When I say that Mr. Griffin's reputation was good in every community in which I knew him, I refer to Galveston, Beaumont, and Sour Lake. I knew him at Galveston prior to 1900 only to talk to. I never

had any business with him until I got to Spindletop. When he was at Galveston, he was connected with some transportation concern there and I was living in Galveston. I heard Fred Chase discuss him in Galveston. There was quite a Galveston bunch that went up to Spindletop and Beaumont and various ones were dealing with Griffin and I think if he had had a bad reputation, I probably would have heard it. I don't know whether Griffin went to Beaumont before or after me. I knew him at Beaumont during the period of one or two years and then he went to Sour [2951] Lake. I had dealings with Mr. Griffin and Mr. Bird at Spindletop. He used to test out wells there with air. We often were on the road and our men would go up there and get him to test out a certain well. I think at that time Mr. Griffin was living at Beaumont and I was living at Beaumont; that is, I was living at Galveston, but staying at Beaumont. I spent 80% of my time in 1901 and 1902 at Beaumont, Sour Lake and Spindletop; practically lived there. After I went up to the oil fields, I became intimately acquainted with Mr. Griffin; he worked for us. When I say that we were intimately acquainted I mean exactly as you would be with a man who was furnishing air to flow your wells. I would go and make arrangements with him to flow a well and he would tell me when he could do it and he would be there to see if it was done. Our acquaintance, of course, was only in a business way; not a social way. I was a man that went around town to various places

where drillers would congregate and I have met Mr. Griffin at various places. I met him at the Cosby House, where I stopped part of the time. I don't remember ever hearing any special discussion about Mr. Griffin further than that I have heard people speak of having done business with him or with the company that he was connected with. He always kept his word with me. He was not unusually a talkative man, but he never hesitated to answer any question I ever asked him. He never did any boasting to me about what he had accomplished. I never heard that he had a reputation in the field of being windy and I never considered him windy and he never evidenced any traits of that [2952] character in his conversation with me. My dealings with him were principally business dealings in connection with wells that I was operating. We did not have an intimate social acquaintance; I didn't run with him. All the people there that spoke of him spoke well of him. I never heard anyone speak ill of him. I heard D. R. Beatty there speak of him. He said that Mr. Griffin was doing his work. I know Mr. Beatty boasted about the work that Griffin did at Sour Lake in shutting off his well, as it was considered in the field quite a nervy thing to do, and Mr. Griffin was commended by many people for doing that particular thing. I heard a man there by the name of Birmingham that Griffin did business for at Spindletop speak of him. I never heard him say anything against him. I heard Frank Yost at Beaumont speak of him. He had busi-

ness with him and he never said anything against him. I have heard him speak of the work done by Mr. Griffin and he had no complaint about that work. I know he would have impressed me if he had ever complained of Griffin's work. When I was at Beaumont, Spindletop and Sour Lake, I don't know of Mr. Griffin making any trips to California, but I think in the latter part of 1903 or the early part of 1904 he came into my office at Sour Lake and said that he was going West. I don't know where he went; I think he went away and left that part of the country along about that time. I don't think that was as late as August, 1904. The first time I ever heard of this case was this morning. At that time Mr. Mills spoke to me about it and he asked me to come down here. When I saw Mr. Griffin last April he did not tell me [2953] what he was doing in California. I only spoke to him about two minutes. I think from the description I have given of Mr. Griffin that I am in a position to know what his reputation amongst those with whom he associated generally in Spindletop and Sour Lake was. Mr. Griffin never made a statement to me that he didn't make good. I never knew him to make statements that were overdrawn and in that respect his reputation amongst those with whom he commonly associated was good. I know that to be a fact. I never heard anyone discuss his propensity to brag. The Mr. Birmingham that I mentioned was an operator over there.

NOAH ALLEN, a witness called and sworn on behalf of the plaintiff in rebuttal, testified as follows:

DIRECT EXAMINATION

I reside at San Antonio, Texas, and am fifty-eight years old last February; I am an attorney at law, and have practiced thirty-seven years, having been admitted to the bar in Missouri in 1876; I practiced at Wichita, Kansas; Denver, Colorado; and in Galveston, Houston and Brownsville, Texas; I was assistant attorney general of Kansas under the Llewellyn administration; I was the Populist candidate for congress in 1896, and was judge of the Corporation Court of the City of Galveston for approximately two years, and resigned that position and went to the Beaumont oil fields in the oil excitement there; in 1892 I was a presidential elector on the Populist ticket; for the past five years and up to August of last year I held the position of Assistant United States District Attorney for the Southern District of Texas. For one or two years I was attorney for the Gulf and Interstate Railway Company. I was one of the directors and vice president of the Zenith Oil Company. I was also a director and I think I was vice president and general manager of the Gold Standard Oil Company and the Texla Oil and Refining Company. Associated with me in the Gold Standard Oil [2954] Company was Mr. Tom Dunn, Cashier of one of the large local banks here in Houston, Texas; Mr. Lovejoy, a prominent attorney both here and in Galveston; Mr.

Alex Sampson; and Mr. James Butte, a prominent merchant.

I know Thomas J. Griffin; I first knew him at Galveston in 1894; I went to Galveston in 1894, and it was possibly a year and a half or two years after that I first met Griffin; I knew him some time before the Galveston storm; I knew him at Beaumont, and knew about when he went to Beaumont, but cannot fix the exact date.

I am quite well acquainted in Galveston, and am intimately acquainted with the reputation of Griffin in that community for truth, veracity, honesty and integrity; it was quite good.

I am also well acquainted in Beaumont; I go back and forth and am acquainted with the people, especially in the oil fields, and also at Spindletop, and know Griffin's reputation for truth and veracity, honesty and integrity in both of those places; it is good. If Mr. Griffin had any reputation but a good reputation in any of the communities in which I knew him, I think I would have known it.

I remember talking with him about going to California. I should judge probably a year and a half or two years before I moved from Houston, but I do not know the time; it is my recollection that it was some time after I withdrew from the Beaumont field that I talked with him about that, but as to just when it was, the time of year, or what year, I could not say. I think it was as late as the winter of 1903 and 1904.

CROSS EXAMINATION
OF NOAH ALLEN

On Thursday or Friday I received a letter from Mr. Mills, addressed to me at Brownsville, and forwarded to San Antonio, asking me if I would come and testify in this case.

I was acquainted with Mr. Griffin at the time I was corporation [2955] judge in Galveston; my recollection is that I knew him before the election of Mayor Jones; I think Griffin took part in that election, and my recollection is that he supported Jones. I cannot tell just what his specific employment was at that time, but I think when I first got to know him he was engaged in business as an engineer; I am not certain where he lived; I never visited his home, and was no more intimate with him than with people in different parts of the city; I think Griffin assisted in the Jones campaign from there. I do not think I ever had any personal dealings with him; I cannot say whether it was at Beaumont, or at Houston that I last saw him.

I cannot remember the conversation about Griffin going to California, but simply remember seeing him and talking with him about California—either that he was going or had been there, but think he said he was going to California, he did not say what part; I do not remember the conversation, but just barely the circumstance of his mentioning the fact that he was going to California, or something of that kind; I do not know whether he went or not; he did not say whom he was going with, and I do not remember what

he said about it, if he did; I cannot remember the year he made this statement, and would not attempt to fix the year, because I had no occasion to remember, nothing particular to remember it by, other than simply it was possibly among the last times I was at Beaumont.

I never had any business dealings with Mr. Griffin of any kind, and do not know from personal experience what sort of a man he is in business dealings.

BEN S. DAVIDSON, a witness called and sworn on behalf of the plaintiff, in rebuttal testified as follows:

DIRECT EXAMINATION

I am chief of police of Houston, which has a population of one [2956] hundred and twenty or one hundred and twenty-five thousand; I have lived in Texas forty-three years, and have lived in Galveston fifteen years; I was chief deputy sheriff in Galveston about six years prior to going to Houston, and also city clerk of Galveston one term.

Since I have been in Houston I have been associated with W. S. Hipp, in contracting, paving, grading and railroad construction work. During my residence in Galveston I became acquainted with Thomas J. Griffin; he was living there at the time I knew him; I knew him for two or three years; I am myself very well acquainted in Galveston; I did not know Griffin anywhere else excepting at Galveston, and lived in no other community with him; I think I was in a posi-

tion to know his reputation generally for truth and veracity, honesty and integrity, in Galveston; it was good as far as I know; I have heard nothing bad about him at any time. [2957]

Cross-Examination:

While I was in Galveston I knew Mr. Griffin mighty well; I was an associate of his in a political way; several people who were friends of Griffin and myself took it upon ourselves to elect a certain man there to a certain office, and during that election he and I had occasion to be very familiar; I was in almost daily contact with him during that campaign,—the Fly and Jones campaign for mayor; we were supporting Jones. The others associated with Griffin in the fight were Marcene Johnson, George McCracken, a lawyer, and several others, and there was a man by the name of Noah Allen; I was in the same crowd; we formed a sort of campaign committee; I do not know what part Griffin took in the fight but we made the rounds nightly, as was customary in those times, making ward speeches and campaigning generally on behalf of the candidate; this was in 1908, as far as I can remember.

I cannot say where Griffin lived in Galveston; I did not live in the same neighborhood with him; my chief knowledge of him came from my association with him in that campaign; I did not know him after he went into the oil fields, or know anything about his reputation; I have not seen him since, until twenty minutes ago.

Griffin was a free talker, good off-hand, pretty good single-handed talker; he could hold his own in a crowd telling his experiences; he told a pretty good story about what he had done, and would top the other fellow if he could.

Redirect Examination.

My chief knowledge of Mr. Griffin was gained in that campaign; outside of that I did not know very much about him.

Recross-Examination.

I have never heard Griffin's character discussed by anybody. [2958]

GEORGE Q. McCRACKEN, a witness called and sworn on behalf of the plaintiff in rebuttal, testified as follows:

DIRECT EXAMINATION

I live in Galveston, Texas, and have lived in Texas since 1877; about thirty years in Galveston; I practiced law at Galveston for eleven years, and was city clerk of that city from 1899 to 1901; I was also clerk of the police department from 1895 to 1899; during that period I knew Thomas J. Griffin; as well as I can recollect he was an engineer; I first knew him in Galveston along in 1898 or 1899; I considered his reputation for truth and veracity, honesty and integrity as good. My estimate of Mr. Griffin, basing my answer upon my acquaintance with him and the reputation which he bore in that community, is that he is a man whose statement you would take as the truth. I have never heard anything against Mr. Griffin.

CROSS-EXAMINATION
OF GEORGE Q. McCRACKEN

Mayor Fly appointed me clerk of the police department, and I held that position until 1899; I was appointed city clerk of Galveston by Mayor Jones; Mayor Jones was elected in 1899, and I worked during the campaign for his election; he was a candidate against Fly; I was associated slightly with Noah Allen in that election, and with Mr. Davidson; we were all interested in seeing Jones elected, and took an active part in the campaign work; I think Griffin was interested in the campaign, and he was quite active in trying to have Mr. Jones elected Mayor.

To the best of my recollection, I became acquainted with Griffin about a year before the campaign, or it might be two years, but I cannot say definitely; I thought that he was an engineer of some kind, but I kept no track of him, as I had no occasion to do so; I may have known him as I did a number of other citizens of Galveston that I might come in contact with, and Griffin was among [2959] that number; that is my best recollection; I think he lived in Galveston in 1901; I had no occasion to keep track of his movements at that time, and do not recollect where he lived in Galveston; I was not socially acquainted with his neighbors.

During the campaign I saw Griffin two or three times a week; the campaign lasted six or eight weeks, and after the election I saw him probably two or three times a week; I had no business relations with

him outside of the campaign; he was not a client of mine, nor were any of his associates; my acquaintance with Griffin centered largely around the campaign, and after that I had no occasion to keep track of him at all; I had no business dealings with him of any kind, and he had no occasion to come to my office, and I had no occasion to look him up; my acquaintance with Griffin was no different than with others engaged in the campaign; I had no knowledge of his reputation after he went to Beaumont, and after he left Galveston I made no inquiries concerning him; in fact, I have not seen Griffin since he left Galveston.

I never heard anything derogatory said against Mr. Griffin while he lived in Galveston. The fact of the matter is I always considered Mr. Griffin a man of truth and veracity. I have never heard anything said derogatory to his character as to truth, honesty, veracity and integrity at any time. My observation of Mr. Griffin was that he was very loyal to his friends.

ALBERT ADAM SNELL, a witness called and sworn on behalf of the plaintiff in rebuttal, testified as follows:

DIRECT EXAMINATION

I reside in Bryan, Texas, and am engaged in drilling wild-cat oil wells at Spindletop; I am acquainted with certain oil operators there; I operated in Sour Lake, Batson and Saratoga, and also in the Louisiana field.

I knew Griffin quite well there, but do not know

just how [2960] long; I knew him at Sour Lake, possibly two years; my first acquaintance with Griffin was at Spindletop when he was running a big air plant there; I had no business dealings with him at Batson, but drilled him some water wells at Sour Lake for an air plant at Spindletop, and also at Sour Lake for an air plant that he operated there; Griffin was well known among the oil people, oil operators, at Spindletop and Sour Lake, and from my association with him in the Spindletop and Sour Lake and with other operators there, I was acquainted with his reputation for truth and veracity, and it was good; I never heard anything detrimental to it.

CROSS EXAMINATION OF ALBERT ADAM SNELL

I had dealings with Mr. Griffin. I drilled some water wells for him at Spindletop and Sour Lake. He was the man that made the contract with me and paid me. There never was any contract drawn up. If Mr. Griffin wanted a water well he came over and said: "Have you got a rig that you can come over and drill me a water well?" I said, "Yes", and he would say, "What can you do it for?" and I would say, "So much a foot." I went over and drilled a well and when I got through I presented my bill and got my money. Sometimes, if I wanted a hundred or two hundred dollars, I said: "Griffin, I need a couple of hundred dollars." Sometimes he had the money in his pocket and he would hand it to me. Sometimes he would give me a check. I drilled wells for the Spin-

dletop company under Mr. Griffin's instructions. I had no dealings with any other person connected with the Spindletop Power Company, although I knew Mr. Bass when I met him, but I never had any business dealings with him.

I knew Mr. Griffin for two years at Sour Lake, but do not remember what years they were, I cannot fix the time; I had no wells at Spindletop, and did not purchase any air from the Spindletop Power Company; I was in the water well business several years in [2961] the coast country; I drilled wells from Maragorda County up to Louisiana; at one time I had seven drilling rigs running; I had charge of the drills and went from one place to another; I did not spend all of my time at any one place; I did not know that Mr. Griffin was living at Sour Lake when I was operating there; I did not know any of his associates over there, or at Spindletop; I did not travel with the same crowd.

I had no business dealings with Griffin at Batson; I do not know of my own knowledge, nor have I ever heard that he was employed by the Rio Bravo Oil Company; I do not know that I ever heard anybody discuss Griffin's reputation, and was not interested in finding out about it; we were friendly in a social way, and still are; he was always a free talkative fellow, full of fun, that is, with me. He is a hail fellow, well met; by golly, he is a good fellow to all his friends, and was very liberal. I cannot say that he did any more talking than other people I have come

in contact with. I have seen fellows that talked a good deal more than he did. He is not what you would call windy. I think he is a conservative business man. He was conservative in his statements to me. I have never heard anything detrimental to his character. I always addressed him as Mr. Griffin. I never heard him [2962] called by any nickname. I never heard him called "Spindletop Griffin". I don't know what his associates called him.

REDIRECT EXAMINATION

From what I know of Mr. Griffin, and basing my statement on my general acquaintance with conditions in the oil fields, he was a man of prominence and large affairs in the communities of Sour Lake and Spindletop.

RECROSS EXAMINATION

I know that he was operating at that time a very large air plant, which I presume, from the experience that I have had in the air proposition myself, was worth at least fifty or seventy-five thousand dollars. I don't know what interest Mr. Griffin had in the plant. I only considered that Mr. Griffin had the authority to give me a contract and he paid me for what work I did. I never gave the thought that he owned the entire plant any consideration. I formed the conclusion that he was a man of large affairs from the fact that when Mr. Griffin wanted any work he came to me and said that he wanted me to do it and I did it and I got my money. I didn't know whether Mr. Griffin owned the plant or who owned it. I pre-

sumed that from the fact that I was asked to do the work and got my money, that I concluded that he was a man of large affairs, and I don't know as I have any other reasons for so stating. [2963]

REDIRECT EXAMINATION

Mr. Griffin was operating the Spindletop Power Company and it was a very busy concern. It was busy operating flowing wells for the different operators in the field. I knew that he was operating continuously and that it was essential that he have sufficient water to run his plant. I know that it was urgent, when he called on me to drill those water wells for him, to make those wells and do it quick, and I based my opinion that he was a man of large affairs from the fact that he did operate and flow wells for other people, and not alone from the fact that he employed me to make wells and paid me for it.

RECROSS EXAMINATION

I base my conclusions upon dealings with Mr. Griffin, as I found all those dealings came out all right, and I therefore concluded that he was all right. I never had any business dealings with Mr. Griffin after the Spindletop Power Company went into the hands of a receiver. [2964]

P. G. WILLIAMS

Witness called in behalf of Plaintiff in

REBUTTAL.

November 28, 1913. San Francisco, Cal.

Direct Examination.

I am the same P. G. Williams who testified in this case for the defendants; I am secretary, also auditor, of the Associated Oil Company; I succeeded G. Sheridan as secretary about the 18th day of August, 1912; the duties of secretary and auditor of that company are entirely separate and distinct; as secretary my duties are to attend the meetings of the board of directors, and stockholders' meetings; to record the minutes of those meetings, and to have the custody of contracts and leases; I have general custody of the records of the corporation, as secretary, including the minutes of different meetings of the directors, the executive committee, and stockholders; I have here copies of annual statements issued by the Associated Oil Company from the date of its origin to the year 1912; it was organized in October, 1901; the last statement is dated December 31, 1912; there is an annual statement for each year, with the exception of 1909, at which time the same statement as issued to the stock exchange of New York was issued to the stockholders in lieu of the regular annual statement; these statements, taken generally, contain the names of the officers and directors of the corporation, with three exceptions wherein I have amended them so as to show the names as now presented; I now produce the annual statements for the years 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1910, 1911 and 1912.

The Associated Oil Company is capitalized at forty million dollars; 400,000 shares of the par value of

\$100 each, all of which has been issued; I have examined the books and records of this corporation for the purpose of determining the number of its shares held by the Southern Pacific Company during the time [2965] intervening between its organization and the present; the Southern Pacific Company first acquired stock of the Associated Oil Company January 1st, 1904, amounting to 40,299 shares; all the stock of that corporation belonging to the Southern Pacific Company has been issued in its name; none has been issued to any other party to be held in trust for the Southern Pacific; this stock was all disposed of during the year 1904; giving the figures as of the first of January, of each year, the next year that the Southern Pacific Company held any stock of the Associated Oil Company was 1909, 206,971 shares; 1910, 200,690 shares; 1911, 200,690 shares; 1912, 200,685 shares, and January 1st, 1913, 200,685 shares. In 1905 there were 54,898 $\frac{1}{100}$ shares of the Associated Oil Company standing in the name of W. F. Herrin, Trustee; it stood in Mr. Herrin's name for several years, and during the year 1908 it was transferred to the name of the Southern Pacific Company, and so appears upon its books; to the best of my knowledge no other stock was ever held in trust and afterwards transferred to the Southern Pacific Company; I have not examined the books and records to ascertain from whom Mr. Herrin acquired his stock, I do not know; on January 1st, 1909, the Southern Pacific Company held a few more shares, practically only 703 shares,

besides that stock acquired from W. F. Herrin; during all the time from January 1, 1909 to January 1, 1913, the Southern Pacific Company held a majority ownership of the capital stock of the Associated Oil Company; as of January 1, 1908, there appears in the name of W. F. Herrin, Trustee, 206,268 shares, and that was transferred to the Southern Pacific Company during 1908; that includes the 54,000.

The names of the officers and directors of the Associated Oil Company appear on the title page of the official first annual statement of the company issued to its stockholders; I did not prepare this statement, and have not compared it with the records of the Associated Oil Company. [2966]

That portion of said first annual report showing the title page and names of the officers and directors of the Associated Oil Company was introduced in evidence, and extended into the record, as follows:

“First Annual Statement Associated Oil Company. Year 1902. Statement made Stockholders at Annual Meeting Held February 24, 1903. San Francisco, Cal., February 24, 1903.

OFFICERS

J. A. Chanslor	President
Wm. G. Kerckhoff	1st Vice-President
W. A. Jacobs	2nd Vice-President
W. S. Porter	General Manager
O. Scribner	Secretary

DIRECTORS

C. A. Canfield	Wm. G. Kerekhoff
W. F. Chandler	Burton E. Green
W. A. Jacobs	W. S. Porter
B. F. Brooks	John A. Bunting
O. Scribner	Frank H. Buck
J. A. Chanslor	

The first annual statement does not show the names of the executive committee; there was no executive committee as of that date, nor was there an executive committee at the time of the annual statement of 1903.

The annual statement of 1903 originally contained the names of the officers only, and I have typed in from the records the names of the directors.

The extract from the Second Annual Statement of the Associated Oil Company last referred to was introduced in evidence, and is as follows:

“Second Annual Statement Associated Oil Company. Year 1903. [2967] Statement Made Stockholders at Annual Meeting Held February 29, 1904.

OFFICERS

J. A. Chanslor	President
W. S. Porter	1st Vice-President and General Manager
W. F. Chandler	2nd Vice-President
B. E. Green	Treasurer
O. Scribner	Secretary

(In typewriting) DIRECTORS

B. F. Brooks
W. S. Porter
W. G. Kerckhoff
J. A. Chanslor
Burton E. Green
Frank H. Buck
W. F. Chandler
W. A. Jacobs
John A. Bunting
O. Scribner
C. A. Canfield

The official statement for the year 1904 originally bore the names of the officers, and I have typewritten the names of the directors from the records of the corporation. There was no executive committee during that year.

The portion of the third annual statement of the Associated Oil Company last referred to was introduced in evidence, as follows:

“Third Annual Statement Associated Oil Company. Year 1904. Statement Made Stockholders at Annual Meeting Held February 27, 1905. San Francisco, Cal., February 27, 1905.

OFFICERS

J. A. Chanslor	President
W. S. Porter	1st Vice-President and General Manager.
W. F. Chandler	2nd Vice-President

B. E. Green	Treasurer
O. Scribner	Asst. Gen. Manager and [2968]
	Secretary
W. A. Sloan	Assistant Secretary

(In typewriting) DIRECTORS 1904

O. Scribner
John A. Bunting
W. F. Chandler
C. A. Canfield
Burton E. Green
Frank H. Buck
W. S. Porter
J. A. Chanslor
M. H. Whittier
Henry Ach
C. B. Lillie

I have prepared a list or roster of the officers and directors of the Associated Oil Company for the year 1905, and the same is typewritten and attached to the financial statement for that year, which I now produce.

The portion of said financial statement bearing the names of the officers and directors of said corporation was introduced in evidence, and as introduced, follows:

“Financial Statement of Associated Oil Company for year ending December 31, 1905. Submitted to Stockholders at their annual meeting, held February 26, 1906.

(In typewriting, attached to statement):

DIRECTORS

1905

J. A. Chanslor	M. H. Whittier
W. S. Porter	W. F. Chandler
O. Scribner	W. G. Kerckhoff
C. A. Canfield	Frank H. Buck
Burton E. Green	W. F. Herrin
E. T. Dumble	

OFFICERS:

J. A. Chanslor	Pres.
O. Scribner	Sec'y.
W. A. Sloan	Asst. Sec'y.
W. S. Porter	1st Vice P.
W. F. Chandler	2nd " "
Burton E. Green	Treasurer
W. S. Porter	Gen'l Mgr.
O. Scribner	Asst. Gen. Mgr.

EXECUTIVE COM: W. S. Porter, Burton E. Green and J. A. Chanslor. [2969]

The document now shown me is the official statement of the corporation for the year 1906, and bears the names of the officers and directors for that year. There was no executive committee in 1906.

That portion of said statement bearing the names of the officers and directors was introduced in evidence, and is as follows:

"Fifth Annual Statement, Associated Oil Com-

pany. Year 1906 San Francisco, Cal., February, 1907.

ASSOCIATED OIL COMPANY OFFICERS

J. A. Chanslor	President
W. S. Porter	1st Vice-Pres. and General Manager
W. F. Chandler	2nd Vice-President
B. E. Green	Treasurer
O. Scribner	Asst. Gen. Manager and Secretary
W. A. Sloan	Asst. Secretary.

ASSOCIATED OIL COMPANY DIRECTORS

F. H. Buck	Burton E. Green
C. A. Canfield	W. F. Herrin
W. F. Chandler	Wm. G. Kerckhoff
J. A. Chanslor	W. S. Porter
E. T. Dumble	O. Scribner

M. H. Whittier."

The next paper represents the sixth annual statement of the Associated Oil Company, for the year ending December 31, 1907. It is the official statement for that year, and contains the names of the officers and directors. There was no executive committee in 1907.

The extract from said statement showing names of of- [2970] ficers and directors was intriduced in evidence, and is as follows:

"Sixth Annual Statement, Associated Oil Com-

pany. Year 1907. San Francisco, Cal., February, 1908.

DIRECTORS

F. H. Buck	C. A. Canfield
W. F. Chandler	J. A. Chanslor
E. T. Dumble	Burton E. Green
W. F. Herrin	Wm. G. Kerckhoff
W. S. Porter	O. Scribner

M. H. Whittier

OFFICERS

J. A. Chanslor	President
W. S. Porter	1st Vice-Pres. and General Manager
W. F. Chandler	2nd Vice-President
B. E. Green	Treasurer
O. Scribner	Asst. Gen. Manager and Secretary
W. A. Sloan	Asst. Secretary."

The next is the Annual Report of the Associated Oil Company for the year ending December 31, 1908. It is the official statement of the corporation, and so far as I know it is correct, and contains on the names of the officers and directors in print; I think the notations in pencil are changes in directors for the following year, and that this copy was used in preparing the report for 1909; the printed names are correct, and no attention should be paid to the pencil memoranda.

So much of said document as appeared on the second page, following the title page, showing the di-

rectors and officers and executive committee, was introduced in evidence, as follows:

“Annual Report, Associated Oil Company, 1908.
December 31, 1908.

DIRECTORS

F. H. Buck	W. S. Porter	Burton E. Green	[2971]
W. F. Chandler	C. E. Canfield	Wm. G. Kerckhoff	
(In pencil: Shoup)	(In pencil: Kirkpatrick)	(In pencil: Herrold)	
E. T. Dumble	J. A. Chanslor	O. Scribner	
W. F. Herrin		M. H. Whittier	

EXECUTIVE COMMITTEE

F. H. Buck	W. S. Porter, Chairman	J. A. Chanslor
Wm. F. Herrin		Burton E. Green

GENERAL OFFICERS

J. A. Chanslor	President
W. S. Porter	1st Vice-Pres. and General Manager
W. F. Chandler	2nd Vice-President
O. Scribner	Secretary and Asst. Gen. Manager
W. A. Sloan	Treasurer and Asst. Secretary.”

On the page next preceding the last in the foregoing document appear the names of affiliated proprietary companies in which the Associated Oil Company owned stock at the date of the annual report, as follows: West Coast Oil Company, Recruit Oil Company, Commercial Petroleum Company, Buell

Rancho Oil Company, Shreeves Oil Company, Los Alimos Oil and Development Company, Bakersfield Iron Works, and Associated Supply Company. In 1908 The Associated Oil Company owned a majority of the capital stock in West Coast Oil Company, Recruit Oil Company, Buell Rancho Oil Company, Shreeves Oil Company, Bakersfield Iron Works, and Associated Supply Company.

The paper now shown me is an application to the New York Stock Exchange to list our stock in that exchange, dated April 19, 1910; the data contained therein is principally as of February 28, 1910, and contains the names of the directors and officers as of that date; it is signed by W. S. Porter, Vice-President; He was vice-president at that time; I have not prepared a list of the executive committee for that year; this is the report [2972] which I have testified was submitted, considered and distributed to the stockholders in lieu of the annual statement for 1909; to the best of my knowledge it contains the names of the officers and directors of the Associated Oil Company who were such during 1909; on pages 4 and 5 of this statement appear the names of companies other than the Associated Oil Company, of which it held the a majority of the capital stock in The Associated Transportation Company, West Coast Oil Company, Amalgamated Oil Company, Sterling Oil and Development Company, Associated Supply Company, Bakersfield Iron Works, and Buell Rancho Oil Company, Shreeves Oil Company, and Recruit Oil Company.

The last two paragraphs of said application were introduced in evidence as showing the names of the directors and officers of the Associated Oil Company as of February 28, 1910, and is as follows:

“The Directors of the Company are: W. F. Herrin, W. S. Porter, J. A. Chanslor, R. P. Schwerin, Burton E. Green, Paul Shoup, F. H. Buck, J. C. Kirkpatrick, E. T. Dumble, O. Scribner and Rudolph Herold.

The officers of the Company are: W. F. Herrin, President; W. S. Porter, J. A. Chanslor, Paul Shoup, R. H. Giles, Vice-Presidents; O. Scribner, Secretary; and W. A. Sloan, Treasurer.”

To the best of my recollection, the 1909 executive committee continued the same at the date of this statement; I do not now know their names, but will procure the information and produce it later.

The document which you now hand me is the Annual Report of the Associated Oil Company as of December 31, 1910, and contains the names of the general officers, executive committee and directors as of that date; it is official.

The second page of said report, showing the names of [2973] such persons was introduced in evidence, as follows:

1910

ASSOCIATED OIL COMPANY

DIRECTORS

O. Scribner	W. S. Porter	Wm. F. Herrin
F. H. Buck	Burton E. Green	J. A. Chanslor

R. P. Schwerin	Guy Shoup	John C. Kirkpatrick
E. T. Dumble		Rudolph Herold, Jr.

EXECUTIVE COMMITTEE

W. S. Porter	John C. Kirkpatrick
F. H. Buck	R. P. Schwerin
Wm. F. Herrin, Chairman	

GENERAL OFFICERS

Wm. F. Herrin	President
W. S. Porter	1st Vice-Pres. and General Manager
O. Scribner	Vice-Pres. and Asst. Gen. Manager.
J. A. Chanslor	Vice President
G. Sheridan	Secretary
W. A. Sloan	Treasurer

Reading the first part of the second page, under "Elk Hills District", and which appears over the signature of W. S. Porter, Vice-President and General Manager of the company, is the following statement:

"We acquired by lease of mineral locations 3,200 acres of land in what is known as the Elk Hills District, North Midway, on which we are now drilling 13 wells, the deepest of which has penetrated oil formation. These wells are being drilled for the purpose of acquiring title to the land. Under the terms of our leases we have the option to purchase this land at a reasonable price."

This statement does not disclose all the companies

in which the Associated Oil Company owned or controlled a majority of stock ownership during that year; of those which are named here, [2974] it owned or controlled a majority of the stock of Pioneer Midway Oil Company Consolidated, Sterling Oil & Development Company, West Coast Oil Company, Amalgamated Oil Company. It also owned and controlled the Bakersfield Iron Works by ownership of majority of its stock in 1910, 1911 and 1912, and it does today.

The paper now handed me is the annual report of the Associated Oil Company as of December 31, 1911; it is the official statement of the Associated Oil Company, and contains the names of the general officers, executive committee and directors for 1911.

That portion of said report bearing the names of such persons was introduced in evidence, as follows:

“1911. Annual Report of the Associated Oil Company and Proprietary & Affiliated Companies. December 31, 1911.

DIRECTORS

Wm. Sproule	W. S. Porter	Wm. F. Herrin
F. H. Buck	Frank G. Drum	J. A. Chanslor
R. P. Schwerin	A. D. McDonald	John C. Kirkpatrick
M. H. Whittier		Rudolph Herold, Jr.

EXECUTIVE COMMITTEE

Wm. F. Herrin, Chairman

W. S. Porter	John C. Kirkpatrick
F. H. Buck	Wm. Sproule

GENERAL OFFICERS

Wm. F. Herrin	President
W. S. Porter	1st Vice-Pres. and General Manager
D. B. Henderson	Ass't. Gen'l Manager
G. Sheridan	Secretary
W. A. Sloan	Treasurer

The said report is made to the stockholders through the Vice-President, and is signed by W. S. Porter, Vice-President and General Manager,—that is, a portion of it; reading from the top [2975] of page 2 which you mark in pencil:

“The work done by us in the Buena Vista Hills, on what are known as the McMurtry lands, demonstrates these lands to be of great value and capable of producing both oil and gas in large quantities.”

And the last paragraph which is over the name of W. S. Porter:

“Notwithstanding the reduced selling price of oil, the net earnings of the company were approximately the same as during the preceeding year, and were used largely in paying for 4,261,144 barrels of oil purchased and stored during the year, and for the purpose of building additional storage to the extent of 1,500,000 barrels. The depreciation reserve amounting to \$645,650.00 was used for the retirement of outstanding bonds, thus reducing our bonded indebtedness to that extent.”

The defendants moved that both of the foregoing statements be stricken out, on the ground that they

are irrelevant to any of the issues in this case, immaterial, not rebuttal of any testimony introduced on behalf of defendants; incompetent, because relating to transactions of other than the defendants, and without any showing that the acts or statements made were authorized by parties to this action, or that the parties making them were authorized to represent the defendants.

The Southern Pacific Company did not own any of those bonds that were retired; there was a bond issue in 1902, an authorized issue of five million dollars, par value, but they were never all issued, or, rather, they were never all outstanding at one time; undoubtedly the records of the Associated Oil Company will show to whom the bonds were originally sold, but after they are disposed of they have no record of what was done with them; some of them were at one time held by the Southern Pacific or some of the subsidiary companies, but how many or [2976] what percent of the bonds were held by them I do not know; I can tell from the records how many bonds they acquired as of a certain date, but beyond that I cannot say; they are a gradually diminishing quantity, because outstanding bonds at five per cent are redeemed every year; our records do not show to whom interest was paid.

I now have a copy of the original official annual report of the Associated Oil Company for the year 1912, as issued and distributed to its stockholders, and containing the names of the officers and directors

and executive committee at that time, signed by William Sproule, President.

So much of said document as shows the names of the officers, directors and executive committee, and the two pages thereof signed by said president, introduced in evidence as follows:

DIRECTORS

(December 31, 1912)

F. H. Buck	Wm. F. Herrin	W. S. Porter
J. A. Chanslor	John C. Kirkpatrick	R. P. Schwerin
Frank G. Drum	A. D. McDonald	Wm. Sproule
Rudolph Herold, Jr.		M. H. Whittier

EXECUTIVE COMMITTEE

Wm. Sproule, Chairman

F. H. Buck	Wm. F. Herrin
Frank G. Drum	John G. Kirkpatrick

GENERAL OFFICERS

(December 31, 1912)

Wm. Sproule	President
J. A. Chanslor	Vice-President
J. R. Lewis	V. P. in New York
F. B. Henderson	Ass't Gen'l Manager
P. G. Williams	Secretary
W. A. Sloan	Treasurer
C. L. Coppage	Asst. Secy.
R. A. Page	Asst. Secy. in New York

ASSOCIATED OIL COMPANY

“To the Stockholders of the Associated Oil Company: [2977]”

The Board of Directors submits herewith combined annual statement of the Associated Oil Company and its proprietary companies (Associated Supply Company and Bakersfield Iron Works) for the year ended December 31st, 1912.

Business earnings after deducting all operating expenses, maintenance, transportation, etc., were.....	\$3,992,128.16
Fixed charges	
Taxes	\$157,892.33
Interest on Bonds....	775,265.12
	933,157.45
	<hr/>
BALANCE	\$3,058,970.71
Depreciation reserve reinvested in the business	1,828,526.58
	<hr/>
BALANCE TO PROFIT AND LOSS	\$1,230,444.13

In 1912 has not been a satisfactory year in the fuel oil business. Over-production, which was a feature of 1911, reached a point in 1912 at which it became advisable to reduce our development work. Active drilling in the face of general over-production did not commend itself to the Management of this Company. It was deemed the conservative course to reduce drilling and draw from our supply of oil purchased.

OIL STORAGE:

During the year we increased our oil in storage

1,523,000 barrels; on December 31st, 1912, we had on hand 8,106,616 barrels.

TRANSPORTATION DEPARTMENT:

The Associated Transportation Company, which had operated our pipe lines and vessels as a separate corporation, was dissolved in 1912, surrendering to the Associated Oil Company all its assets, and that portion of the business is now handled as a department of this Company. The change reduced administration and other expenses.

MARINE DEPARTMENT:

During the forepart of 1912 our SS. "Rosencrans" met with two serious accidents, resulting in an expenditure of \$150,000 for repairs. At the time of these accidents our fleet was not insured. [2978] Later in the year, all vessels and their cargoes were covered by insurance. During January 1913, the SS. "Rosencrans" (21,000 barrels capacity) was totally wrecked at the mouth of the Columbia River. We received from the Underwriters \$250,000, being amount of the policy carried on that ship.

Plans have been completed for a new steamer, with capacity of 62,000 barrels. Contract for construction will be let at an early date for delivery about the middle of 1914.

REFINERY:

Since January 1st, 1913, construction has been commenced of a new refinery at Avon, on San Francisco Bay, with capacity for handling 10,000 barrels

crude oil per day. It will manufacture gasoline and engine distillate. The plans of the refinery are arranged so that extensions to the plant can be readily made for the manufacture of other products, should we determine hereafter to engage in such manufacture. It is expected that this plant will be ready for operation before the close of the year.

Both of our pipe lines from the San Joaquin Valley oilfields pass through our refinery site and will serve the refinery. The main lines of the Southern Pacific and Santa Fe Companies cross the property which has also deep water frontage for a wharf, construction and cost of which is included in the plan for handling our business. Supply of refining oil for the operation of this refinery is provided for by our oil purchase contracts and from the production of our own properties.

PRODUCTION AND NEW DEVELOPMENT:

During 1912, we completed the drilling of wells as follows: Kern River 4; Lost Hills 3; McKittrick 1; Midway 2. During 1913, active drilling has been resumed on our properties and it is expected that our production will show considerable increase for the the year. It has already increased. During March 1913, we produced 33,000 barrels over corresponding month of 1912. [2979]

No wells were drilled during the year on property we own in the Lost Hills, but 3 wells were completed on property which we have under lease there. One gas well and one oil well were drilled and completed

on our McMurtry properties in the Buena Vista Hills. Since January 1, 1913, two other wells have been finished on the McMurtry properties.

FINANCES:

Since January 1, 1913, the Board of Directors declared a dividend of $1\frac{1}{2}\%$, payable April 15, 1913, to stockholders of record April 10, 1913, with the suggestion that it be the policy of the company to pay semi-annually or at such intervals as the judgment of the Board may determine such dividends as the net earnings of the Company and cash available for that purpose may justify.

The cost of Avon Refinery and of the new steel tank steamer will aggregate about \$1,750,000, and provision has already been made for these payments without borrowing or selling bonds.

It is believed that the Company will not need any new financing in 1913. Our affairs are in a promising condition. We look for increased earnings and the completion of the new refinery will establish the Company on a basis desirable to the stockholders.

AMORTIZATION:

The Company has adopted the policy of writing off a liberal amount annually for depreciation in order that the book value of the property at the end of any period may be on a trustworthy and conservative basis. Our sinking fund retires our entire bond issue within the limit of 20 years from date of authorization.

REORGANIZATION:

The Administrative and Field Departments of the Company have been reorganized during the year, effecting a reduction in our pay rolls at the rate of over \$100,000 per year, with increase of [2980] efficiency.

We wish to make acknowledgement of the loyalty and zeal of officials and staff at headquarters and in the field.

WM. SPROULE,

April 1st, 1913.

President."

Not all of the companies controlled by a majority of stock ownership are contained in this report, but reading from a list of all the companies, the following were so controlled by the Associated Oil Company during the years 1910, 1911, 1912, and 1913: The Amalgamated Oil Company, Associated Transportation Company — which has since been dissolved — Bakersfield Iron Works, Sterling Oil & Development Company, Associated Supply Company, West Coast Oil Company, Buell Rancho Oil Company — that is, up to to the time we disposed of our holdings — Shreeves Oil Company, the Recruit Oil Company. That is the complete list.

The 1912 report is the last one issued to date by the Associated Oil Company.

I now have the original record book of minutes of the executive committee, which is in my custody and control as secretary of the company; it purports to contain a record of the proceedings had at the several meetings of that committee for the periods therein

mentioned; page 192, and on page 193 through the second paragraph of volume 1 of said minutes reads as follows: "Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco Cal., March 22, 1910.

Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on Tuesday, March 22, 1910.

The meeting was called to order at 11 o'clock a. m. by Mr. W. F. Herrin in the Chair. [2981]

Mr. O. Scribner acted as secretary of the meeting.

The Chairman directed the Secretary to call the roll, which disclosed the following:

Present: Messrs W. F. Herrin, J. C. Kirkpatrick and Paul Shoup.

Absent: Messrs. W. S. Porter and F. H. Buck.

The Assistant General Manager stated to the Committee that he had twenty year leases from March 12, 1910, at royalties ranging from one-eighth to one-tenth on the following described lands in the Elk Hills District, to wit:

Township 30 South, Range 23 East, M. D. B. & M.

Of Section 22: Northwest quarter;

Northeast quarter;

Southwest quarter;

Southeast quarter;

Of Section 24: Northwest quarter;

Northeast quarter;

Southwest quarter;

Southeast quarter;

Of Section 26: Northwest quarter;
Northeast quarter;
Southwest quarter;
Southeast quarter;

Township 31 South, Range 24 East, M. D. B. & M.

Of Section 5: Northwest quarter;
Northeast quarter;
Southwest quarter;
Southeast quarter;

that these lands required the drilling of one well on one quarter of each section to maintain possession of each section; that under the leases there was the right to abandon at any time and remove all personal property and improvements from the premises placed thereon by the Lessee; that it was necessary to take immediate possession of the property and build houses thereon which would require an expenditure of from \$15,000 to \$20,000.

On motion to that end duly made and seconded and unanimously carried, the Assistant General Manager was authorized on behalf of the Associated Oil Company to go into possession of [2982] the premises described in said leases, and to perform such acts as may be necessary to maintain possession thereof, and to spend as little money as possible pending the termination of the question whether or not the Associated Oil Company would drill on said premises.

* * * * *

O. Scribner

Secretary.”

The first seven lines of page 199, volume 1, and the last line of the same page, introduced in evidence, is as follows:

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., April 26, 1910.

Regular Meeting of the Executive Committee of Board of Directors of Associated Oil Company held at San Francisco, California, on Tuesday, April 26, 1910.

The meeting convened at 11 o'clock a. m.

Mr. W. F. Herrin in the chair.

Mr. O. Scribner acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, Paul Shoup and J. C. Kirkpatrick.

Absent: Messrs W. S. Porter and F. H. Buck.

* * * * *

O. Scribner,
Secretary.”

Also, reading from page 201, of the same volume, all but the last two paragraphs:

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., May 3, 1910.

Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, [2983] on May 3, 1910.

The Committee convened at 12:15 o'clock p. m.

Mr. W. F. Herrin in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, J. C. Kirkpatrick, F. H. Buck and R. P. Schwerin.

Absent: Mr. W. S. Porter.

The Assistant General Manager recommended to the Committee that a Standard rig be erected on each quarter section of the lands covered by the Elk Hills leases, and a hole drilled to 500 or 700 feet on each quarter, one of the wells on such section to be drilled according to the terms of the lease.

The Committee directed that only sufficient work be done to comply with the terms of the leases as they exist.

* * * * *

G. Sheridan

Secretary pro tem."

Also, reading that part of page 202 appearing in the first seven lines, and on page 203, the second paragraph:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., May 10, 1910.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on May 10, 1910.

The Committee convened at 11:30 o'clock a. m.

Mr. F. F. Herrin in the Chair.

Mr. O. Scribner acted as Secretary of the meeting.

Present: Messrs W. F. Herrin and J. C. Kirkpatrick.

Absent: Messrs W. S. Porter, F. H. Buck and R. P. Schwerin.

* * * * *

The Assistant General Manager was authorized to erect a [2984] Standard rig upon each quarter section of the four sections of land now held under lease in the Elk Hills District, as well as on Section 30, 30 - 24, above referred to, and to drill one well on each section and start a well on each of the remaining three quarters of each section, drilling the same to a depth of from 500 to 700 feet.

* * * * *

O. Scribner,
Secretary."

And, further, from page 212, of the same volume, the first seven lines, and the last paragraph; and the first two words on page 213:

"Minutes of Special Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., June 3, 1910.

Special meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on June 3, 1910.

The meeting convened at 11 o'clock a. m.

Mr. W. F. Herrin in the Chair.

Mr. O. Scribner acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, J. C. Kirkpatrick and F. H. Buck.

Absent: Messrs. W. S. Porter and R. P. Schwerin.

* * * * *

The Committee authorized the Assistant General Manager to pay W. B. Leland, et al. \$1500. for their possessory rights in and to Section 30, 30-24, and to enter into an agreement with other and prior locators who held claims to said Section 30, 30-24, prior to the withdrawal of these lands from mineral entry, upon the basis of spending Five Hundred Dollars for each quarter section for making application for patent, one-half of each of said [2985] quarter section to go to the Associated Oil Company, and an option in the Associated Oil Company to buy the remaining half interest of the locators of said lands at Five Hundred Dollars per acre if purchased in one year, and Seven Hundred and Fifty Dollars per acre if purchased within two years.

* * * * *

O. Scribner

Secretary."

Also, on page 214, of the same volume, the first eleven lines:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., June 7, 1910.

Minutes of Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on Tuesday, June 7, 1910:

The meeting convened at 11:30 o'clock a. m.

Mr. W. F. Herrin in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs W. F. Herrin, F. H. Buck and J. C. Kirkpatrick.

Absent: Messrs W. S. Porter and R. P. Schwerin.

The Assistant General Manager reported progress of work on lands in the Elk Hills District, based upon report of Mr. L. J. King, Superintendent, which report is dated June 4, 1910.

* * * * *

G. Sheridan

Secretary pro tem."

Also, that portion of page 287 containing down through the name R. P. Schwerin, absent; and on page 288, the fourth paragraph from the bottom:

"Minutes of Regular Meeting of Executive Committee of Board [2986] of Directors of Associated Oil Company.

San Francisco, Cal., November 29, 1910.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on Tuesday, November 29, 1910.

The meeting convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs W. F. Herrin, W. S. Porter, Frank H. Buck and J. C. Kirkpatrick.

Absent: Mr. R. P. Schwerin.

* * * * *

The General Manager reported that the well of the Associated Oil Company on Section 26, Township 30 South, Range 23 East, Elk Hills, had been drilled to a depth of 3140 feet, and that the field manager advises that he looks for a gusher in this well.

* * * * *

G. Sheridan,
Secretary."

Reading from page 291, down to the words "Absent; None"; also, at page 292, the last two paragraphs; and on page 293 ending with the word "Secretary.":

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., December 6, 1910.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at San Francisco, California, on Tuesday, December 6, 1910.

The meeting convened at 11:15 o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

[2987]

Present: Messrs. W. F. Herrin, W. S. Porter, F. H. Buck, J. C. Kirkpatrick and R. P. Schwerin.

Absent: None.

* * * * *

"The General Manager reported that the Associated Oil Company's well in Elk Hills is 3140 feet deep,

and that it has been lying idle for a week; that well in Lost Hills is 919 feet deep in blue shale.

The General Manager stated that he had reports from the Field Department that the Southeast quarter of Section 22, Township 30 South, Range 23 East, M. D. B. & M., Elk Hills has been jumped.

On motion to that end duly made and seconded and unanimously carried, the General Manager was authorized to commence drilling on each quarter section of all of our lands held under lease in Elk Hills, and described as follows, to wit:

<i>Section</i>			<i>Township</i>			<i>Range</i>		
22			30 S			23 E		
24			“			“		
26			“			“		
30			“			24 E		
5			31 S			“		
*	*	*	*	*	*	*	*	*

G. Sheridan
Secretary.

At page 297, to the words “Absent: None”; page 300, paragraph beginning, “The General Manager reported”, and ending with “to the Committee”, and page 301, the last paragraph, also page 302, the first three lines, appears the following:

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., December 20, 1910.

Regular meeting of Executive Committee of

Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Building, San Francisco, California, on Tuesday, [2988] December 20, 1910.

The Committee convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, F. H. Buck, J. C. Kirkpatrick and R. P. Schwerin.

Absent: None.

* * * * *

The General Manager reported that there was no change in the Elk Hills well since the date of the last report to the Committee.

* * * * *

The Assistant General Manager reported to the Committee that at the time we took leases on lands in Elk Hills he was advised that there was but one set of locators, who made their location on January 1, 1910, and who were in possession of the property; that subsequently, on securing abstracts of title to the properties (which were delayed because of pressure of work in the office of the Abstract Company), and after the Oil Company had erected derricks and was in possession, he ascertained there were prior locators claiming to have made discovery of Fuller's Earth on the properties; that our leases on these lands carried an option to purchase, if exercised within one year, at \$500 per acre, and at \$750 per acre if exercised within two years from the date of

the lease; that for and on behalf of the Associated Oil Company he had entered into supplemental agreement with the Lessors extending the time of the option and reducing the purchase price to \$250 and \$375 per acre; also had a verbal understanding with the prior locators to receive three forty acre pieces of each quarter section for drilling a well on each quarter and also lease on the remaining forty in each quarter with option to purchase the same at One Thousand Dol- [2989] lars per acre.

* * * * *

Reading the first part of page 340 to the words "Absent: R. P. Schwerin.", a portion of page 341, commencing with the second paragraph, to the end of the third paragraph on page 342; and the paragraph immediately under Mr. Porter's signature, on the same page, is the following:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., March 21, 1911.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Bldg., San Francisco, California, on Tuesday, March 21, 1911.

The Committee convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, F. H. Buck, and John C. Kirkpatrick.

Absent: Mr. R. P. Schwerin.

* * * * *

The General Manager presented the following report in reference to title to Elk Hills and McMurtry lands:

San Francisco, March 20, 1911.

To the Executive Committee:—

In examining into the titles to our Elk Hills Property, the present development of which indicates it to be oil producing land, I find that the mineral filings on which we base our title to this property were made subsequent to September 27, 1909.

Mineral filings were made on these lands prior to September 27, 1909, and are now held by Messrs McKittrick, Jastro, Tevis, [2990] et al, of Bakersfield. These parties have, however, done no active work looking to the discovery of oil, but have made slight excavations and uncovered a deposit, which they call "Fuller's Earth". Samples of this earth submitted to Smith, Emery & Company are stated by latter not to be Fullers Earth at all, nor capable of being used commercially for any purpose for which Fullers Earth is used. On the other hand Thomas Price & Son report that the sample furnished them will answer the same purposes commercially as Fullers Earth. Letters from both of the above chemists are enclosed herewith. We have forwarded samples to Stabler & Company at Los Angeles, for their report.

The claimants under these mineral filings have asked for a patent on Section 24, 30-23 and Section

30, 30-24 by reason of their discovery of Fullers Earth. I understand that generally the department is opposed to granting patents to lands on the discovery of minerals of this nature, especially where the lands are more valuable for oil.

I recommend the acquisition of these conflicting titles for the reason that they were made prior to September 27, 1909, and the work we have done, if applied against these filings would insure the issuance of a patent to us, providing we discover oil on each quarter section, which I think probable. In fact, we have made sufficient discovery on section 26 to enable us to obtain a patent at this time had the filings owned by us been made prior to the date of withdrawal.

We are under agreement to pay to the original holders of mineral filings, under which we are operating, various sums of money and rentals (one-eighth and one-tenth), should we acquire patent thereunder. It seems now that in order to be sure of acquiring patent we should acquire the Tevis, McKittrick, Jastro et al., filings prior to the date of withdrawal, and [2991] whatever we pay for such filings should be deducted from the payments we are under contract to make to the owners of other filings, which by reason of legislation have since become valueless, except for work done thereon by us. Mr. Scribner had some negotiations with Mr. Jastro looking to the acquisition of these filings made prior to September 27, 1909, and had agreed upon terms at which we would ac-

quire the same. They afterwards withdrew negotiations.

I suggest that the matter be taken up with Mr. Jastro and an endeavor made to complete the acquisition of these titles, and at the same time arrangements be made with the owners of the filings acquired by us, that a corresponding reduction, or some reduction be made from the payments due them, as their filings and our work will both be lost, under recent legislation, unless these conflicting titles are acquired.

I recommend that the matter be turned over to Mr. Scribner and that he again open negotiations through such channels as he thinks best, looking to the acquisition of these titles. Mr. Jastro has been friendly to us throughout the entire matter.

* * * * *

(Signed) W. S. Porter

The matter was generally and very carefully discussed by the Committee and, upon motion to that end duly made and seconded and unanimously carried, the matter was referred to the General Manager with instructions to see Mr. Tevis and ascertain about what he would want and report back to the Committee.

* * * * *

G. Sheridan

Secretary.

Also, that portion of page 351 consisting of the first seven lines; the last paragraph of page 353, and all of page 354, as follows: [2992]

“Minutes of Adjourned Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., April 19, 1911.

“Adjourned meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Building, San Francisco, California, on Wednesday, April 19, 1911.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin and John C. Kirkpatrick and Assistant General Manager O. Scribner.

* * * * *

The Assistant General Manager reported that he had seen Mr. Jastro in reference to lands in Elk Hills; that Mr. Jastro stated that his people wanted One Thousand Dollars an acre for all of Section twenty-six and \$250 per acre for the rest of the land. The Assistant General Manager advised Mr. Jastro that the company would pay \$1000 per acre even if the land were patented, in fact we would pay any money until the title to the land was clear. Mr. Jastro desired us to make a proposition, which the Assistant General Manager said we would not do at the present time.

There being no further business before the Committee, on motion to that end duly made and seconded, the meeting adjourned.

G. Sheridan
Secretary.”

Again reading so much of page 362 of the same volume as ends with the words "Absent: W. F. Herrin and W. S. Porter;" and page 363, excepting the first two and last lines:

"Minutes of Regular Meeting of Executive Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., May 31, 1911.

"Regular meeting of Executive Committee of Board of Directors [2993] of Associated Oil Company, held at the office of the company, Wells Fargo Building, San Francisco, California, on Wednesday, May 31, 1911, Tuesday, May 30, 1911, being a holiday.

The Committee convened at eleven o'clock a. m.

Mr. F. H. Buck was elected Chairman of the meeting.

G. Sheridan acted as Secretary of the meeting.

The Chairman directed the Secretary to call the roll, which disclosed the following:

Present: Messrs. F. H. Buck, R. P. Schwerin and John C. Kirkpatrick, and Assistant General Manager O. Scribner.

Absent: Messrs. W. F. Herrin and W. S. Porter.

* * * * *

The Assistant General Manager reported that he had been in negotiation with H. A. Jastro relative to settling the claims of the Haberkern locators on lands held by the Associated Oil Company in Elk Hills; that the proposition as submitted by Mr. Jastro looking toward a settlement was in the judgment of the Assistant General Manager unreasonable; that he

had a Mr. Fennell working quietly on the matter, and that Mr. Fennell reported that all of the locators would dispose of their claims for \$200 per acre for all of the lands, but those in section 24, for which they wanted \$1,000 per acre, which money was to be paid within one or two years after patent was issued by the United States Government. The Assistant General Manager stated that in addition to the analyses made by Smith-Emery Co. and Thomas Price & Son of San Francisco, that he had E. A. Stabler & Co. of Los Angeles make an analysis of the substance purported to be Fullers Earth, and on which the Haberkern locators would base their application for patent; that Stabler & Co. reported that the only samples which could be used at all for the purposes for which Fullers Earth is used are those samples taken from two quarter sections, to wit, the northwest quarter of Section 22 and [2994] northwest quarter of section 26, 30-23, and that in view of this report he thought it better to litigate on the whole situation and compromise on these two quarter sections rather than accept the proposition submitted by Mr. Fennell; that in his opinion it was impossible to get the benefit of their prior locations if we did compromise, and that this was one of the main reasons for compromising at all, and that he was not in favor of compromising at this time.

The matter of settlement was left with the Assistant General Manager with instructions to report back to the Committee the result of any negotiations he may have.

The Assistant General Manager reported that one of the locators on the south half of Section 24 and the south half of Section 22 in T. 30, S, R. 23 E, Elk Hills, now held by the Associated Oil Company under lease and option to purchase, had offered to sell us his one-eighth interest in the above for \$1200 net; that our option to purchase this land was at \$250 per acre after patent had been issued by the United States Government.

The matter was very generally and carefully discussed by the Committee, and on motion duly made, seconded and unanimously carried, the offer was declined.

* * * * *

G. Sheridan
Secretary."

Also page 375 of the same volume, to and including the words "Absent: Messrs W. F. Herrin and F. H. Buck," and on page 376, the second paragraph:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., June 27, 1911.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, [2995] Wells Fargo Building, San Francisco, Cal., on Tuesday, June 27, 1911.

The Committee convened at eleven o'clock a. m.

In the absence of the President, Mr. W. S. Porter,

First Vice-President, took the Chair, and presided at the meeting.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. S. Porter, John C. Kirkpatrick and R. P. Schwerin.

Absent: Messrs. W. F. Herrin and F. H. Buck.

* * * * *

On motion of Mr. Kirkpatrick, duly seconded and unanimously carried, the Assistant General Manager was authorized to settle the controversy on the Elk Hills Lands with what are known as the 'Haberkoern-Klipstein' interests on the basis of paying \$200 and up to but not exceeding \$250 per acre within a year after these interests secure patents from the U. S. Government, if they do secure patent, it being understood that this involved four sections only, section 5 not being included in the controversy. It was recommended that this be done in the name of some individual or outside corporation, the name of the Pacific Petroleum Company being suggested.

* * * * *

G. Sheridan

Secretary.

And reading from page 398, to and including the pages 'Absent: None', and the last paragraph thereof; and the first line of page 399:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., August 22, 1911.

"Regular Meeting of Executive Committee of

Board of Directors of Associated Oil Company, held at the office of the company, [2996] Wells Fargo Bldg., San Francisco, Cal., on Tuesday, August 22, 1911.

The meeting convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, R. P. Schwerin, John C. Kirkpatrick and F. H. Buck.

Absent: None.

* * * * *

In reference to drilling in Elk Hills, it was decided to continue drilling the five wells set forth on said report until further ordered. A report to be submitted at each meeting of the work performed and progress made.

* * * * *

G. Sheridan

Secretary."

Reading from page 400 to and including the word "None", and the paragraph near the top of page 402, consisting of eleven lines, as follows:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., August 29, 1911.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Bldg., San Francisco, Cal., on Tuesday, August 29, 1911.

The Committee convened at eleven o'clock a. m.

W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, R. P. Schwerin, John C. Kirkpatrick and F. H. Buck.

Absent: None. [2997]

* * * * *

The General Manager advised the Committee that he had issued the following instructions in the matter of drilling on Elk Hills lands:

Section 5, 31-24; Well No. 1. Stop work on this immediately;

Section 22, 30-23; well No. 3. Stop work on this immediately;

Section 24, 30-23: well No. 3. Proceed with the drilling of this well;

Section 26, 30-23: well No. 1. As soon as the field Department has completed perforating this well and testing it to see the result obtained, discontinue work thereon, they to advise him when this is done.

Section 30, 30-24: well No. 1. Proceed with the drilling of this well.

The above instructions were discussed at length by the Committee and the matter went over for a week.

* * * * *

G. Sheridan
Secretary."

Further, at page 395, to and including the word "None"; and, on page 397, a short paragraph, as follows:

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., August 15, 1911.

“Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Bldg., San Francisco, Cal., on Tuesday, August 15, 1911.

The Committee convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, F. H. Buck, John C. Kirkpatrick and R. P. Schwerin.

Absent: None. [2998]

* * * * *

The General Manager was directed to report at the next meeting of the Committee the total amount of money spent to date by the Associated Oil Company on lands held by it under lease in Elk Hills.

* * * * *

G. Sheridan
Secretary.”

At page 410, to and including the word “None”; and page 411, the fourth paragraph beginning with the words “The General Manager reported”; and page 412, the second paragraph, is the following:

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., Sept. 19, 1911.

“Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Bldg., San Francisco, Cal., on Tuesday, September 19, 1911.

The Committee convened at eleven o'clock a. m.

Mr. W. F. Herrin, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. F. Herrin, W. S. Porter, F. H. Buck, R. P. Schwerin and John C. Kirkpatrick.

Absent: None.

* * * * *

The General Manager reported that he had submitted to our attorney the question of cessation of drilling operations on lands held by the Associated Oil Company in Elk Hills under lease; that he advises that the Picket Bill provides that the rights of any person at the date of any order of withdrawal, which is a bona fide occupant or claimant of oil or gas bearing [2999] lands, and who at the date of the withdrawal is in the diligent prosecution of the work, shall not be affected or impaired by the order ‘so long as such occupant or claimant shall continue in diligent prosecution of said work’, and in his opinion under that law, in view of the policy of the Government, as exhibited by withdrawals and the laws passed, it is shown to be such that a cessation of drilling operations, without discovery, would destroy the rights of the locator, and that he is under obligation, in order to maintain any rights he has under the Pickett Bill to continue in diligent prosecution of his

work without interruption until final abandonment or discovery and there is, therefore, of course, great danger of losing the rights of this company and all rights of locators by a cessation of work.

The General Manager reported to the Committee that Messrs. Henderson and Bell were in the field at the present time and would return in a few days and upon their return would submit their recommendation as to whether or not we should continue operations on these Elk Hills lands. It was decided by the Committee to await the report of Messrs. Henderson and Bell.

In reference to the producing well on Section 26, Elk Hills, which well is now producing about forty-five barrels of oil per day, the General Manager reported to the Committee that he had submitted to our attorney the question of whether or not the Associated Oil Company should serve notice on the Lessors of the Southwest quarter of said Section to make application for patent under the following provision of our lease from them: 'Upon completion of any well in which oil has been developed, lessors shall make application for patent for land upon which the well is located, and lessee shall pay the necessary expenses incurred in obtaining patent;' that in our attorney's opinion the obligation is on the lessors to make the application for patent and for the lessees to pay the necessary expenses in-[3000]curred in obtaining the same, and that in his opinion the General Manager of the Associated Oil Company should make demand upon the locators under whom we hold set-

ting forth the facts as they exist and request of them that they immediately make application for patent.

The matter was very generally and thoroughly discussed by the Committee and the General Manager was directed to serve notice in accordance with the above.

* * * * *

G. Sheridan,
Secretary."

Also, page 439, to and including the name "Kirkpatrick"; the paragraph on the same page commencing with "On motion of Mr. Schwerin", all of page 440, ending with the word "approved", as follows:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., November 28, 1911.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, San Francisco, California, on Tuesday, November 28, 1911.

The meeting convened at eleven o'clock a. m.

In the absence of the President, the First Vice-President, Mr. W. S. Porter, took the Chair, and presided at the meeting.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. S. Porter, F. H. Buck and R. P. Schwerin.

Absent: Messrs. Wm. F. Herrin and John C. Kirkpatrick.

* * * * *

On motion of Mr. Schwerin, seconded by Mr. Buck and unanimously carried, A. F. E's on the 1911 statement No. 48, were approved with the following exceptions: [3001]

	*	*	*	*	*	*	*	*	*
Elk Hills No. 71, deepening Section 26, Well No. 3, to approximately 3500 ft. to test for oil on Northeast quarter, well now 518 ft. deep									\$33,422.53
Estimate — drill new well on S.W. 1-4 of Sec. 26, to prove up this quarter, etc.									45,000.00
									<hr/>
Total									\$78,422.53
Making the total amount approved									32,897.61

The General Manager reported as follows in reference to recommendation of the Field Department that we deepen well No. 3 on Section 26 at a cost of \$33,422.53, drill a well on the S. W. 1-4 of Sec. 26 at a cost of \$45,000, and deepen well No. 1 on Sec. 30 at a cost of \$12,020.25; 'This well on Section 30 is now 3,836 feet deep having passed through 12 feet of oil stratum at 2,713 feet. We have already expended on the five sections of land which we hold under lease in Elk Hills, \$418,000. The Field Department advises that if we forfeit these leases, applying for patents on the 160 acres in Sec. 26 and the 160 acres in Sec. 30, on which we have made discoveries of oil, that we can remove material which will effect a salvage of approximately \$100,000, the net result being that we would be in position to ask for patents on 160 acres in Sec. 26, and 160 acres in Sec. 30, which

will be done at once, and doing no further work on any of the other lands. Under those conditions these two wells will have cost us \$318,000, provided the salvage is \$100,000, as stated above. Our legal department is unable to advise us definitely what the action of the Interior Department will be in regard to these lands, but construes the Pickett Bill to mean that in order to hold lands and eventually acquire patent thereto, we must legitimately carry on the work on each of the twenty quarter sections involved in a manner to make a discovery of oil. This would mean that to be safe we must select these quarter sections at this time on which we deem it advisable to carry on such work. The work on each quarter section would cost approximately \$5,000 per month in order to conform to this construction, and if work is carried on on the eighteen quarter sections on which discovery has not been made, this would mean an expenditure of approximately \$90,000 monthly. There are also conflicting mineral claims on these lands owned by other parties, who claim title by reason of discovery of Fullers Earth. These claimants are carrying on work on each quarter section, and have made applications for patent on portions of sections 24 and 30. We would be obliged to contest these applications in the Land Office.

In view of the uncertainty as to the status of our right to obtain patents to any of these lands, even if discovery is made, I recommend that we discontinue work entirely on these lands with the exception of

the pumping of well on Section 26 and the deepening of well on Section 30”.

On motion of Mr. Schwerin, seconded by Mr. Buck, and unanimously adopted, the recommendation of the General Manager was approved.

* * * * *

G. Sheridan
Secretary.”

At page 444, to and including the name “Kirkpatrick”; the last paragraph of the same page, and on page 445 through the second paragraph, ending with the word “Manager”, follows:

“Minutes of Special Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., December 1, 1911.

“Special Meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Building, San Francisco, California, on Friday, December 1, 1911.

The meeting convened at 2:30 o'clock p. m. [3003]

In the absence of the President, Mr. W. S. Porter, First Vice-President, took the Chair and presided at the meeting.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. W. S. Porter, F. H. Buck and R. P. Schwerin.

Absent: Messrs. Wm. F. Herrin and John C. Kirkpatrick.

In reference to the deepening of well on Section

30, 30-24, Elk Hills, \$12,020.25 having been appropriated for this purpose by the committee at their last meeting, as appears on A.F.E. Sheet No. 48, Elk Hills No. 72, the General Manager stated that while at the meeting held on November 28th he stated that he was in favor of carrying this well to a depth of 4500 feet as recommended by the Field Department, he had since that time consulted with the Geological Department and they reported that while we might find a producing sand at this depth of 4500 feet, it would not necessarily follow that this same sand would underlie other sections in this district and held by us under lease. The General Manager called the attention of the committee to the fact that we heretofore passed through an oil producing sand in this well at 2700 feet; that the well is now 3800 feet deep, and that the Field Department advise that they can complete the well at this depth without losing any of the hole, so that if in the future it is deemed advisable to carry this well deeper we can do so. The General Manager stated that in view of these reports from the Field and Geological Departments, if it met with the approval of the Executive Committee, he would not authorize the deepening of this well at this time.

On motion of Mr. Buck, seconded by Mr. Schwerin, and unanimously carried, authorization of November 28, 1911, to deepen well on Section 30, 30-24 to a depth of 4500 feet at a cost of \$12,020.25 as appears by Elk Hills A. F. E. No. 72 on 1911 statement No. 48, was rescinded, it being understood that this well is

to be completed at its present depth of 3800 feet as re-[3004]commended by the General Manager.

* * * * *

G. Sheridan Secretary."

Page 484, to and including the name "F. H. Buck", and through the word "Present"; also page 456, the second paragraph to and including the words "less than \$100", as follows:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., December 12, 1911.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Wells Fargo Building, San Francisco, Cal., on Tuesday, December 12, 1911.

The Committee convened at eleven o'clock a. m.

In the absence of the President and First Vice-President, Mr. F. H. Buck was elected Chairman of the meeting.

Present: Messrs. F. H. Buck, R. P. Schwerin and John C. Kirkpatrick. Mr. F. B. Henderson, Assistant General Manager, was also present.

* * * * *

The Chairman presented letter from the Field Manager dated December 12, 1911, recommending that an appropriation be made of between \$900 and \$1000 to cover assessment work for the year 1911 as follows:

ELK HILLS

On the N. E. 1-4 of Section 24, T. 30 S., R. 23 E. on

which no actual work has been done during the year 1911, but on which a complete drilling rig was erected and 100 ft. of hole drilled during the year 1910. Recommend that the hole be deepened 100 feet, estimated cost being \$500;

On the S. W. 1-4 of Sec. 26, T. 30 S., R. 23 E., on which no work at all has been done. Recommend that a cabin be erected at a cost of not less than \$100.

* * * * *

G. Sheridan

Secretary."

[3005]

Also, page 462, through the name "W. S. Porter"; and the three paragraphs on page 465, ending with the words "this meeting", as follows:

"Minutes of Special Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., December 14, 1911.

"Special Meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the Company, Wells Fargo Bldg., San Francisco, Cal., on Thursday, December 14, 1911.

The Committee convened at ten o'clock a. m.

In the absence of the President and First Vice-President, Mr. F. H. Buck was elected Chairman of the meeting.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. F. H. Buck, John C. Kirkpatrick and R. P. Schwerin.

Absent: Messrs. Wm. F. Herrin and W. S. Porter.

* * * * *

Thereupon the Assistant General Manager called the attention of the Committee to letter of the Field Manager dated December 12, which was before them on that date and asking that about \$600 be appropriated for annual assessment work on the N.E. 1-4 of Section 24, 30-23 and on the S. W. 1-4 of Section 26, 30-23, Elk Hills, which at that time was not approved by the Committee.

The Assistant General Manager presented written opinion from the legal department wherein Mr. Tauszky advised that in his opinion we may be held liable by the lessors under our leases and advised doing the work for this year.

The matter was discussed by the Committee and on motion of Mr. Kirkpatrick, seconded by Mr. Schwerin, and unanimously carried, the Committee authorized the Assistant General Manager to proceed with the work, as recommended by the Field Manager at an expense [3006] of \$600, this action being based on the opinion of the legal department and now before this meeting.

* * * * *

G. Sheridan

Secretary."

Reading from volume 2, of the minutes of the executive committee of the Associated Oil Company, page 69, to and including the word "None"; and page 70, to and including the words "said wells":

“Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., June 25, 1912.

“Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, room 712 Wells Fargo Building, San Francisco, California, on Tuesday, June 25, 1912.

The meeting convened at eleven o'clock.

Mr. Wm. Sproule, President, in the Chair.

G. Sheridan acted as Secretary of the meeting.

Present: Messrs. Wm. Sproule, W. S. Porter, Wm. F. Herrin, John C. Kirkpatrick and Frank H. Buck.

Absent: None.

* * * * *

On motion of Mr. Porter seconded by Mr. Buck, the following resolution was unanimously adopted.

Resolved that the General Manager be and he is hereby authorized and directed to instruct the Field Department not to make any further expenditures until otherwise ordered by this committee on any lands in Elk Hills except on the lands in sections 24, 26 and 30, on which wells have been brought in, and to limit the expenditures on said lands to such as may be necessary in the operation of said wells. [3007]

* * * * *

G. Sheridan

Secretary.”

Also, at page 98, to and including the name “Frank H. Buck”; and on page 100, the second, third and

fourth paragraphs, including the word "burdens", as follows:

"Minutes of Regular Meeting of Executive Committee of Board of Directors of Associated Oil Company.

San Francisco, Cal., September 17, 1912.

"Regular meeting of Executive Committee of Board of Directors of Associated Oil Company, held at the office of the company, Room 712 Wells Fargo Building, San Francisco, on Tuesday, September 17, 1912.

The meeting convened at 11 o'clock a. m.

Mr. Wm. Sproule, President, in the Chair.

Mr. P. G. Williams acted as Secretary of the meeting.

Present: Messrs. Wm. Sproule, Wm. F. Herrin and John C. Kirkpatrick and Assistant General Manager F. B. Henderson.

Absent: Messrs. W. S. Porter and Frank H. Buck.

* * * * *

The Assistant General Manager reports that Attorney Tauszky under date of August 27, 1912, advises that application of F. G. Munzer, et al., for a patent for portion of Sec. 24, 30-23, Elk Hills has been withdrawn without prejudice to right of applicants to file an application for patent to such land or any part thereof hereafter. This application has heretofore been protested by Guy Louthain, et al., and hearing of such protest was conducted in Visalia Land Office the fore part of this year.

Attorney Tauszky discussed with Messrs. Lamber-son and Farnsworth, attorneys for protestants, the advisability of filing our application for patent to this land and also advisability of endeavoring to obtain ruling from the Land Dept. on the Munzer ap-[3008] plication, notwithstanding its withdrawal; it was the concensus of opinion that the better policy was to take no action upon these matters at this time. If application for patent is filed by Louthain, et al., the local land office will decline to issue notice on the ground that the land has been withdrawn prior to location by Louthain, et al.

The Munzer application for patent having been dismissed, we only risk an adverse ruling by seeking to have it determined. Therefore concluded to await further affirmative action on the part of the Munzer people and defend against same rather than assume or take any unnecessary risks or burdens.

P. G. Williams,
Secretary."

Volume 2 just referred to, the same as volume 1, contains the minutes of the Executive Committee of the Associated Oil Company; it is in my custody and under my control, and was produced here in court in response to subpoena.

Plaintiff introduced in evidence plaintiff's exhibit 6-QR-LL, being a lease dated March 12, 1910, between G. L. Blosser and others, parties of the first part, and W. O. Maxwell, party of the second part, in and by which the parties of the first part leased for the period of twenty years from date to the party of the

second part the southeast quarter of section 24, township 30 south, range 23 east, M. D. M., for the purpose of excavating, drilling and developing petroleum and other mineral deposits.

Plaintiff introduced in evidence plaintiff's exhibit 6-S-LL, being a supplemental agreement between the same parties above named, relating to the same land, and dated July 20, 1910, modifying the lease last referred to.

Plaintiff introduced in evidence Plaintiff's exhibit 6-T - LL, being original assignment dated November 14, 1910, by [3009] W. O. Maxwell to Associated Oil Company, of lease by G. L. Blosser, et al, to W. O. Maxwell, covering the southwest quarter of Section 24, Township 30 South, Range 23 East, M. D. B. & M.

Plaintiff introduced in evidence plaintiff's exhibit 6-U-LL, being original lease dated the 12th day of March, 1910, for the period of 20 years from its date of the southeast quarter of section 24, 30-23, from G. L. Blosser, et al, to W. O. Maxwell, for the purposes of boring, drilling and sinking for asphaltum, petroleum, natural gas, tar, gypsum, coal or other minerals.

Plaintiff introduced in evidence plaintiff's exhibit 6-V - LL, being copy of agreement between the last-named parties, modifying lease, plaintiff's exhibit 6-U-LL, and dated July 20, 1910.

Plaintiff introduced in evidence plaintiff's exhibit 6-W-LL, being assignment by W. O. Maxwell to Associated Oil Company, of lease, plaintiff's exhibit 6-U-LL, and dated November 14, 1910.

Plaintiff introduced in evidence plaintiff's exhibit 6-X - LL, being original lease dated March 12, 1910, Dan Evenger, et al, to W. O. Maxwell, of northeast quarter of Section 24, 30-23, for the period of 20 years from its date, to mine, excavate, bore, drill and sink for asphaltum, petroleum, natural gas, tar, gypsum, coal and other minerals.

Plaintiff introduced in evidence plaintiff's exhibit 6-Y - LL, being agreement dated July 20, 1910, between the last-named parties, for the modification of lease, plaintiff's exhibit 6-X - LL.

Plaintiff introduced in evidence plaintiff's exhibit 6-Z - LL, being original assignment dated November 14, 1910, by W. O. Maxwell to Associated Oil Company of said last-mentioned lease.

Plaintiff introduced in evidence plaintiff's exhibit [3010] 7-A - LL, being original lease dated March 12, 1910, Dan Evenger, et al, to W. O. Maxwell, for the period of 20 years from its date of the northwest quarter of Section 24, Township 30 South, Range 23 East, M. D. B. & M., to mine, excavate, bore, drill and sink for asphaltum, petroleum, natural gas, tar, gypsum, coal or other minerals.

Plaintiff introduced in evidence plaintiff's exhibit 7-B - LL, being original of agreement dated July 6, 1910, between S. M. Johnson, et al, and W. S. Badger, relating to three-fourths interest in the northwest quarter of Section 24, of 30-23, and transferring to W. S. Badger certain lands.

Plaintiff introduced in evidence plaintiff's exhibit 7-C - LL, being original of agreement dated Septem-

ber 12, 1910, between D. Evenger, et al., parties of the first part; S. M. Johnston, et al, parties of the second part; W. O. Maxwell, party of the third part; and W. S. Badger, party of the fourth part, assigning from fourth party to party of the third part lease and agreement between the parties of the second and fourth parts dated July 6, 1910, and providing that the parties of the first and second parts shall have half interest in the lands described as, and profits from, the northwest quarter of section 24, township 30 south, range 23 east, M. D. B. & M.

Plaintiff introduced in evidence plaintiff's exhibit 7-D - LL, being deed of assignment W. O. Maxwell to Associated Oil Company, of the northwest quarter of Section 24, township 30 south, range 23 east, dated November 14, 1910; which said lands were leased to W. O. Maxwell by Dan Evenger, et al, March 12, 1910.

Plaintiff introduced in evidence plaintiff's exhibits 7-E - LL, to 7-K - LL, inclusive, being powers of attorney as follows, respectively:

J. M. Dover and Margaret C. Dover, to J. F. Dover, — to sell and transfer any lands in Kern County, and shares of stock in [3011] Section Twenty-Five Oil Company, dated July 9, 1907;

W. A. McNeil to James W. Riggle, full power to handle any interest in township 30, range 24 East, and township 30, range 23 East, M. D. B. & M., dated February 12, 1910.

J. W. Heard to C. C. Painter, full power to act in any manner relative to lease and supplemental agreement dated March 12, 1910 covering north $\frac{1}{2}$ of sec-

tion 24, and north 1½ of section 26, township 30 South, range 23 East, M. D. B & M., executed March 10, 1910.

D. R. Evenger to W. Rhyne, to sign leases to W. O. Maxwell on lands in section 24, township 30 South, range 23 east, M. D. B. & M., dated March 25, 1910.

F. B. Wilson, sometimes known as B. F. Wilson, to W. S. Lierly, full power to locate, relocate, grant, bargain, sell, remise, release, convey and quitclaim for said Wilson, on lands in sections:

30 Township 30 Range 24

22 " 30 " 23

26 " 22 " 24

26 " 30 " 23

22 " 30 " 24 Dated June 2, 1910.

John D. Cage, Miss Emma Cage, W. F. Phillips, Mrs. Lenora Cage, Richard Dougherty, also known as Richard Doherty, J. L. Reed and J. A. Ross, to J. E. Baker, power to lease, let, demise, convey and contract for development for mineral in sections 28 and 30, township 30 South, range 24 east, M.D.B.& M., in Kern County, California, dated September 8, 1909.

Mrs. H. J. Dover to H. J. Dover, her husband, full power (general), dated March 16, 1910.

(The witness continuing, testified substantially as follows:)

These instruments, leases, memorandum of agreement, and powers of attorney, have been in my custody as secretary of the Associated Oil Company.

In 1910 a bond issue of twenty-five million was authorized, of which I should say more than fifty

percent was sold to the [3012] Southern Pacific Company; the original acquisition of them will show by my books, but I could not tell who has them now; I have a memorandum here of the issue of 1902, 1910, and 1909; as I have previously testified, the 206,268 shares of stock held by the Southern Pacific Company was transferred to it from W. F. Herrin.

Direct Examination: (resumed) November 29, 1913;
San Francisco.

Since the last session I have procured from the records of the Associated Oil Company data as to the executive committee of 1909; they were W. S. Porter, F. H. Buck, W. F. Herrin, J. A. Chanslor, and Burton E. Green; I think Mr. Porter was Chairman.

Upon further reference to the records, I find that the number of shares held by Mr. Herrin on January 1st, 1905, was 39,284.92, which was about 20 per cent of the total issue; the number of shares then issued was 211,384.04; the total issue of 1903, on January 1st, was 184,223.17, of which none had been issued to the Southern Pacific Company, or any person, firm or corporation on its behalf; the total issue of stock of Associated Oil Company on January 1, 1904, was 190,847.34, of which 40,299 shares stood in the name of the Southern Pacific Company; none at that time was in the name of any other person for the Southern Pacific; in 1905, of the 211,384.04 shares none stood in the name of the Southern Pacific Company; but W. F. Herrin, Trustee, had 39,284.92; On January 1, 1906, the total amount of capital stock issued

was 228,384.04, at which time there were 148,684.92 shares in the name of W. F. Herrin, Trustee.

The records show that W. F. Herrin obtained the amount of stock represented by the difference between what he held January 1, 1905, and what he appears to have held January 1st, 1906, as follows: 83,100 shares from the Union Trust Company; 26,300 shares from C. H. Markham; I am not positive from whom the Union Trust Company of San Francisco obtained its stock, but I think it was [3013] originally issued by the trustees, — in other words, that the Union Trust Company was the first that held it; C. H. Markham obtained the 26,300 shares from Union Trust Company.

On January 1, 1907, the total amount of outstanding capital stock of the Associated Oil Company was 297,369.96; there was none in the name of the Southern Pacific Company; W. F. Herrin Trustee, held 148,684.92; on January 1st, 1908, the total amount of outstanding stock was 297,369.96, of which there stood in the name of W. F. Herrin, Trustee, 206,268 shares, according to my memorandum, but I cannot reconcile this with the total outstanding; I think the total capital stock had been issued, — the full 400,000 shares, because Mr. Herrin did not hold as trustee more than 200,000 shares until the capital stock was all issued, and I think the memorandum must represent the year 1909, instead of 1908; I will prepare a tabulated statement and present it at a later session.

In 1908 none of the stock stood in the name of the Southern Pacific Company; in 1909 my memorandum

shows 400,000 shares, total issue, and 206,971 in the name of the Southern Pacific, but none held by W. F. Herrin, as trustee; in 1910 the total amount issued was 400,000 shares; none stood in the name of W. F. Herrin as trustee; the Southern Pacific Company held 200,690 shares, and the same applies to the year 1911; in 1912, January 1, the total issued stock was 400,000 shares, of which 200,685 was in the name of the Southern Pacific Company; and in 1913, 400,000 shares, total issue, with 200,685 in the name of the Southern Pacific Company.

Of the bond issues concerning which I was to testify at this time, I have ascertained that there were two issues by Associated Oil Company; one in 1902, an authorized issue of five million; and the next issue was January 15, 1910, twenty-five million; of this latter issue the Southern Pacific Company received [3014] twelve million one hundred four thousand; of this authorized issue something more than thirteen million was actually issued; I am unable to say the exact amount; my recollection is that it was 13,685,000; there have been more issued, so that now there are 13,685,000 and as to the exact amount I shall ascertain and report; Of the original issue the trustee was Union Trust Company of San Francisco, to the best of my recollection, and subsequently transferred to Southern California Trust Company; the second issue, the Union Trust Company of San Francisco; the principal office of the Southern California Trust Company is at Los Angeles.

Direct Examination (resumed); December 2, 1913.
San Francisco.

I have prepared in tabulated form a memorandum of the stock in the Associated Oil Company held by the Southern Pacific Company, showing from whom it was acquired, for the several years from 1904 to the present time; I examined the original books of the records of the Associated Oil Company for the purpose of ascertaining these facts; on April 5, 1904 the Southern Pacific Company acquired 4,029,900 shares of the capital stock of the Associated Oil Company, of a par value of one dollar each in the San Joaquin Oil Company and the Reed Crude Oil Company; at that date the total outstanding amount of capital stock of that company was 19,086,623 shares; on December 1, 1906, the Southern Pacific Company held 14,868,492 shares of Associated Oil Company stock; in addition to the amount before testified as having been acquired from the San Joaquin Oil Company and Reed Crude Oil Company, they acquired from the Associated Oil Company 10,838,592 shares, of the par value of one dollar each; those two make up the total of 14,868,492 shares; on that date the total amount of outstanding stock of Associated Oil Company was 29,736,996 shares, of the par value of one dollar; that figures out as lacking six shares of one half of the total outstanding stock; from the records I know that at that time the [3015] Southern Pacific Company did not through control of seven or eight other shares of the stock, control the Associated Oil Company; On October 1, 1908, the total amount

of stock of the Associated Oil Company owned by the Southern Pacific Company was 199,981.22 shares, of the par value of one hundred dollars each; the difference between the amount held on that date and that held on December 1st, 1906, was acquired from the Associated Oil Company; the amount acquired by the Southern Pacific Company from the Associated Oil Company was 51,296.30 shares, of the par value of one hundred dollars each; on October 1, 1908 the total amount of outstanding stock of the Associated Oil Company was 400,000 shares, of the par value of \$100.; on October 9, 1908, the Southern Pacific Company acquired from the Associated Oil Company 6,286.78 shares, of the par value of \$100 each, making a total of 206,268 shares; On November 20, 1909, the Southern Pacific acquired 703 shares, of the par value of \$100 each, from the Associated Oil Company; there was still a total outstanding of 400,000 shares; this was the total authorized issue, and there has been no change since that time; there were no further acquisitions of stock by the Southern Pacific Company; On August 31, 1910, 6,281 shares of the par value of one hundred dollars each, were transferred to Mrs. M. W. Harriman, leaving in the hands of the Southern Pacific Company 200,690 shares of the par value of one hundred dollars per share; on May 10, 1912, five shares were transferred to Mr. Sproule, — William Sproule, President of the Associated Oil Company; he was president also of the Southern Pacific Company, I understand, on May 10, 1912; the Southern Pacific Company now

holds 200,685 shares of the Associated Oil Company; from my books, the Southern Pacific Company acquired a majority of the capital stock of the Associated Oil Company on October 9, 1908, and has since had control by a majority of the stock ownership, without interruption; the paper memorandum which I hand you is an abstract made by myself from the books and [3016] records of the Associated Oil Company; I have verified it and am satisfied that it is correct.

(Abstract memorandum consisting of the foregoing data introduced in evidence, and marked Plaintiff's Exhibit 10-M - LL.)

Mr. Dumble first acquired stock in the Associated Oil Company February 28, 1910, five shares, par value one hundred dollars each, transferred from the Associated Oil Company to E. T. Dumble, and held by him until July 24, 1911; the by-laws require that a director must hold stock, at least five shares of stock; Mr. Dumble was a director; I think in 1910 the election of directors was held on the third Tuesday of February; this is a complete record of Mr. Dumble's stock from the original of the Associated Oil Company; to the best of my recollection at the present time, the by-laws and rules of the Associated Oil Company required a director to hold at least five shares of stock; I did not make this memorandum myself, and cannot explain at the present time why it does not show stock in his name during the years 1905 to 1909, if he was then a director; he may have had stock, and yet there be a failure to transfer it

to his name; that is possible; I am unable to explain the discrepancy at this time; this information is abstracted from the stock journal and ledger; I do not think they are consecutive for each year, and have no idea whether there is more than one stock journal or ledger; I think there is more, but whether there are five, or fifteen, I cannot say; I believe in some cases there is a dual book, one in the forepart for the forepart for the journal, and the latter part is for the ledger; it may be in later years, when there were so many accounts, that they have separated the journal and ledger; that is the complete record of stock transfers, except the certificates themselves; to the best of my knowledge and belief these stock journals and ledger accounts show the ownership and source of title of capital stock of the Associated held by E. T. Dumble, W. F. Herrin, and [3017] the other directors for all the years therein represented.

I have here a tabulated memorandum of the bond matter, for the years 1902 and 1910, as regards the bonds owned by the Southern Pacific Company, as requested; the authorized issue in 1902 was five million dollars, of which amount 750,000 went to the Southern Pacific Company, 750 bonds of \$1000 each; that is, they purchased on January 17, 1907, 90 bonds; February 8th, 1907, 450; March 2, 1907, 210; they have not matured; the authorized issue in 1910 was twenty-five million, of which to date the Southern Pacific Company acquired 12,104 bonds, of a thousand dollars each; the Southern Pacific Company did not own any other bonds but that, through the own-

ership of other corporations; 450 bonds went to the Pioneer Midway Oil Company; 760 to the Carlton Investment Company; 327 are now held by the Associated; there has been a total of 2403 issued to the Associated; the total amount issued all together was 13,641; now, of the 1902 issue there are 2,044 outstanding at present, of one thousand dollars each; this memorandum was prepared from the books of the company, and are correct; when the Southern Pacific Company purchased of the issue of 1910, ten thousand were purchased at that time, and some of these others were purchased since.

The par value of the capital stock of the Associated Oil Company was changed from one dollar to a hundred dollars, but I do not know the date; the capital stock of the company has not been increased or decreased since its organization.

Direct Examination (resumed): December 4, 1911; San Francisco.

I now produce an abstaect of the title of the stock in Associated Oil Company held by E. T. Dumble, as taken from the original books and records of the company; it was prepared under my direction, and so far as I know it is absolutely correct; to explain: February 25, 1905, what was then a share of stock of the par value of one dollar was transferred from the name of [3018] C. H. Markham to the name of E. T. Dumble; on March 7, 1907, there was a share and a tenth transferred from Dumble and Porter, et al, trustee; to Mr. Dumble, I mean; On November 1, 1909, there was transferred from the name of the As-

sociated Oil Company one share; on February 28, 1910, there was transferred from the Associated Oil Company five shares; as an offset to these certificates transferred to Mr. Dumble, the following were cancelled: On March 7, 1907, to E. T. Dumble, one-tenth share, or one share of the par value of one hundred dollars; April 15, 1910, to the Associated Oil Company, one and one-hundredth shares; November 22, 1910, to the Associated Oil Company, one share; July 24, 1911, to A. D. McDonald, five shares, of the par value of one hundred dollars; these were qualifying shares — shares issued to qualify Mr. Dumble as a director; he now has no stock whatever; at the present time the by-laws require that a director shall have at least five shares in order to qualify; yet I wish to qualify that, as I do not know whether the by-laws at the present time require one share or five shares to qualify; the name of A. D. McDonald appears on the tabulated statement under the word “canceled” because the shares of stock were transferred to the name of A. D. McDonald.

The statement last referred to was offered in evidence and marked Plaintiff’s Exhibit 11-G - LL, and is as follows:

“ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
E. T. DUMBLE.

ISSUED			
<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
2/25/05	C. H. Markham	1332	.01

The United States

3661

3/7/07	(E. T. Dumble & (W. S. Porter, et al (Trustee	1350	1.01
11/1/09	Associated Oil Co.	A-22317	1.
			—
			2.02
2/28/10	Associated Oil Co.	D-7038	5
[3019]			

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
3/7/07	E. T. Dumble	1332	.01
4/15/10	Associated Oil Co.	1350	1.01
11/22/10	Associated Oil Co.	A-22317	1.
			—
			2.02
7/24/11	A. D. McDonald	D-7038	5 "

The next is a transcript of the ledgers — stock records of the Associated Oil Company, showing the shares of stock transferred to the name of W. F. Herrin, Trustee, and the shares of stock transferred from W. F. Herrin, Trustee; my record shows from whom they were transferred; this was prepared under my direction, and to the best of my knowledge and belief is correct.

The statement last referred to and offered in evidence was marked Plaintiff's Exhibit 11-H - LL, and is as follows:

“ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
W. F. HERRIN — TRUSTEE
ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
12/1/06	Union Trust Co.		
	of S. F. Trustee	C-12389	148,684.
“	Wm. F. Herrin	C-12390	.92
10/1/08	C. H. Markham	C-13918	.30
“	Treasury Stock	C-13919	51,296.
10/9/08		C-13974	6,286.
“		C-13975	.78
			<hr/>
			206,268.00
11/20/09	W. S. Porter, et al Tr.	D-2194	6
“	Southern Pac. Co.	F-2084	206,971
			<hr/>
			206,977

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
11/20/09	Southern Pac. Co.	C-12389	148,684.
“	“ “	C-13974	6,286.
“	“ “	C-13919	51,296.
“	“ “	C-13975	.78
“	“ “	C-13918	.30
“	“ “	C-12390	.92
			<hr/>
			206,268.00

8/31/10	Southern Pacific Co.	F-2084	206,971
	Mrs. M. W. Harriman	D-2194	6

206,977

To explain, as appears from the foregoing, on December [3020] 1st, 1906, there was transferred from Union Trust Company of San Francisco, Trustee, 148,694 shares, par value \$100; and on the same date, from W. F. Herrin, ninety-two hundredths of a share, to W. F. Herrin, Trustee; October 1st, 1908, C. H. Markham, thirty hundredths of a share; on the same date, from treasury stock, which means A. O. Company — 51,296 shares; On October 9, 1908, from the same source, 6,286 shares and decimal 78; making a total of 206,268 shares; on November 20, 1909, there was transferred from W. S. Porter, et al, 6 shares; on the same date from Southern Pacific Company, 206,971, making a total of 206,977 shares.

In explanation of the cancellations, on November 20, 1909, covered by several certificates there was transferred to the Southern Pacific Company 206,268 shares; which means that on that date there was transferred to the Southern Pacific Company all the certificates of stock which were issued to W. F. Herrin as trustee down to October 9, 1908. August 31, 1910, to the Southern Pacific Company 206,971 shares; to Mrs. M. W. Harriman, shares.

The paper now shown me is the account with the Union Trust Company of San Francisco, as trustee, of the shares of A. O. Company stock acquired by them and transferred to other parties for their ac-

count; this was prepared under my supervision from the books and records of the Associated Oil Company, and so far as I know it is correct.

Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-I - LL, and is as follows:

“ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
UNION TRUST COMPANY OF
SAN FRANCISCO, TRUSTEE.

- - - - -
ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
1/1/05	On hand	1570 to 1610 and 3465	577,876
1/1/05 to)	J. E. Foulds	1611 to 2400	7,900,000
12/20/05)			<hr/> 8,477,876
[3021]			
9/23/08	Union Trust Co. of S. F., Trustee (Originally from San Joaquin Oil & Dev. Co. 194)	C-13863	1,678
9/23/08	Union Trust Co. of S. F., Trustee	C-13867	.76
			<hr/> 1,678.76

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
12/1/06	W. F. Herrin, Tr.	1570 to 2400	8,310,000

9/23/08	Union Trust Co.	3465	167,876
	S. F. Trustee		
			<hr/>
			8,477,876
12/13/09	O. Scribner	C-13863	1,678
12/13/09	O. Scribner	C-13867	.76
			<hr/>
			1,678.76

Explaining the last exhibit, on January 1, 1905, there stood in the name of the Union Trust Company of San Francisco, Trustee, 577,876 shares of A. O. Company's stock of the par value of one dollar each; between the dates of January 1, 1905, and December 20, 1905, there was transferred from the name of J. E. Foulds, 7,900,000 shares, of the par value of one dollar each, to the Union Trust Company; September 23, 1908, there was transferred from the Union Trust Company of San Francisco, Trustee, 1,678 shares, of the par value of one hundred dollars each; on the same date, from the same party, seventy-six hundredths of one share; the last two lots were transferred by the Union Trust Company to itself.

In explanation of the cancellations, on December 1, 1906, there was cancelled and transferred to the name of Wm. F. Herrin, Trustee, 8,310,000 shares of A. O. Company stock, of the par value of one dollar each; September 23, 1908, transferred to Union Trust Company of San Francisco, Trustee, 167,876 of said stock, par value one dollar; December 13, 1909, transferred to O. Scribner, 1,678.76 shares, par value one hundred dollars each.

The Union Trust Company of San Francisco, Trustee, holds none of the stock now. [3022]

Now I produce the abstract of title of the stock held by Union Trust Company of San Francisco. Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-J - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
UNION TRUST COMPANY OF
SAN FRANCISCO.

ISSUED			
<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
1/1/05	Union Trust Co. of S. F.	4316	392,639

CANCELLED			
<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
11/6/06	W. S. Porter	4316	392,639

The next one is the individual account of W. F. Herrin abstracted, and was prepared under my supervision from the books and records of the Associated Oil Company; it is correct to the best of my knowledge and belief.

Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-K - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN THE AS-
SOCIATED OIL COMPANY
BY WM. F. HERRIN.

ISSUED			
<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
1/1/05	On hand	1330, 4414 & 4661	3,089,901

The United States

3667

12/20/05	Frank H. Buck	9538	838,592
3/7/07	Wm. F. Herrin & W. S. Porter, et al, Tr.	1349	101
			<hr/>
			3,928,594
11/18/09	W. S. Porter, et al Trustee	F-2035	750
12/13/09	W. S. Porter, et al Trustee	F-2106	3,065
9/6/10	Wm. F. Herrin	F-10085	3,815

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
12/1/06	Wm. F. Herrin, Tr.	4414	690,000
12/1/06	do.	4661	2,399,900
12/1/06	do.	9538	838,592
3/7/07	Wm. F. Herrin	1330	1
4/15/10	Associated Oil Co.	1349	101
			<hr/>
			3,928,594
9/6/13	Wm. F. Herrin	F-2106	3,065
"	do.	F-2035	750

[3023]

the foregoing exhibit shows that on January 1, 1905, there was standing in the name of W. F. Herrin 3,089,901 shares of Associated Oil Company's stock, of the par value of one dollar each; On December 20, 1905, there was transferred from the name of Frank H. Buck, 838,592 shares, of the par value of one dollar; March 7, 1907, transferred to Wm. F. Herrin, W. S. Porter, et al, Trustees, 101 shares, of

the par value of one dollar; November 18, 1909, transferred from W. S. Porter, et al, Trustees, 750 shares, of the par value of one hundred dollars each; December 13, 1909, from the same party, 3,065 shares, and September 6, 1910, from W. F. Herrin, 3,815 shares; I cannot at this time say who were represented by the "et al"; the probabilities are that the certificates show, and that in transcribing it to the ledger that term was used; I did not take this off the record myself, nor look at the books; I have not the certificates with me.

The next is the abstract from the ledger of the Associated Oil Company showing the number of shares of the company's stock acquired by C. H. Markham, and to whom they were transferred when he disposed of them; it is prepared in the same way as the others, and is correct so far as I know.

Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-L - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
C. H. MARKHAM

ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
1/1/05	On hand	1331, 4415 & 4660	2,630,001
			2,630,001

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
2/25/05	E. T. Dumble	1331	1

12/1/06	Wm. F. Herrin, Tr.	4415	680,000
"	do.	4660	1,950,000

2,630,001

Exhibit 11-L is thus explained: On January 1, 1905, there was standing in the name of C. H. Markham 2,630,001 shares of the par value of one dollar each; February 25, 1905, there was [3024] transferred to the name of E. T. Dumble one share; December 1, 1906, to Wm. F. Herrin, Trustee, 2,630,000 shares.

The statement now shown me is a transcript of the ledger showing the acquisition of Associated Oil Company stock by R. P. Schwerin, and the disposition of same so far as it is disposed of; it was prepared in like manner, under my supervision, and is correct.

The statement last mentioned was introduced in evidence, marked Plaintiff's Exhibit 11-M - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
R. P. SCHWERIN
ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
11/13/06 to)			
11/27/06) W. S. Porter) A-12416-12435	
	R. P. Schwerin) A-12746-12765	2,000
10/1/08	Treasury stock	C-14147	345
			<hr/> 2,345

12/2/09	W. S. Porter, et al,	D-2763-2782	1,000
7/7/10	R. P. Schwerin,	D-13174-13193	1,000

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
11/27/06	R. P. Schwerin	A-12416-12435	1,000
6/29/09	Mrs. R. P. Schwerin	C-14147	345
12/2/09	R. P. Schwerin	A-12746-12765	1,000
			<hr/>
			2,345
7/7/10	R. P. Schwerin	D-2763-2782	1,000

Showing that on November 13, and 27, 1906, there were two certificates issued, one from W. S. Porter for 1000 shares and one from R. P. Schwerin, making a total of 2,000 shares; October 1, 1908, from the A. O. Company, treasury stock, 345 shares; December 2, 1909, W. S. Porter, et al, Trustees, 1,000 shares; July 7, 1910, R. P. Schwerin, 1,000 shares; November 27, 1906 there was transferred from Mr. Schwerin's name, to R. P. Schwerin, 1,000 shares; June 29, Mrs. R. P. Schwerin, 345 shares; December 2, 1909, R. P. Schwerin, 1,000 shares; July 7, 1910, R. P. Schwerin, 1,000 shares. [3025]

The next one is a transcript of the ledger account, the shares of stock of A. O. Company acquired by Paul Shoup and parties to whom said shares were transferred subsequently; it was prepared the same as the other abstracts, and is correct as far as I know.

Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-N - LL, and is as follows:

“ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
PAUL SHOUP

ISSUED			
<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
2/9/10	Guy V. Shoup	D-6311	20
1/10/11	Paul Shoup	D-14595	10
“	“	D-14596	10
			40

Upon telephonic advice from the witness (through Assistant Secretary Coppage, of the Associated Oil Company) that the above footing should read “40” instead of “30”, I have, by agreement and consent of counsel, corrected the same to read, “40”.

Leo Longley, Special Examiner.

CANCELLED			
<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
1/10/11	Paul Shoup	D-6311	20
2/16/11	Earnest D. Mandenhall	D-14595	10
			30

In explanation of the foregoing, on February 9, 1910, there was transferred to the name of Guy V. Shoup, 20 shares; on January 10, 1911, from Paul Shoup, 20 shares; January 10, 1911, to Paul Shoup 20 shares; February 16, 1911, to Earnest D. Mandenhall, 10 shares. That is not right; according to this paper, 10 shares; he is not now a director, and I think

has not been since a year ago, or more; it is my understanding that he sold all his stock at that time; I will check this afterwards and telephone the Examiner, but there is not any necessity of correcting it, except the "40", it totals 40.

I am now shown a transcript of the ledger account with J. C. Kirkpatrick, showing the acquisition of shares of A .O. Company stock, and the disposition of same so far as it has been disposed of. It was prepared in the same manner as the others. [3026]

The statement last referred to was offered in evidence and marked Plaintiff's Exhibit 11-0 - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN ASSOCI-
ATED OIL COMPANY HELD BY
J. C. KIRKPATRICK

ISSUED			
<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
2/8/10	Fred S. Knight & Co.	D-6290	15
6/8/10	(Henry S. Manheim (J. Barth & Co.	E-10075	100
6/7/11	John C. Kirkpatrick	D-16313	60
2/13/12	John C. Kirkpatrick	D-17805	10
8/1/12	(J. C. Wilson Harris Winthrop & Co.	E-10967-10971	500
12/17/12	do.	E-11364-11366	300
			985

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
6/7/11	(J. C. Kirkpatrick (Obadiah Rich	E-10075	100
2/13/12	(J. C. Kirkpatrick (Obadiah Rich	D-16313	60
12/14/12	(Milton A. Bremer (Albert L. Ehrman	E-10969	100
12/14/12	(Henry S. Manheim (Carl Raiss & Co.	E-10967	100
12/14/12	(J. Barth & Co. (Sutro & Co.	E-10968	100
			<hr/> 460

J. Barth & Company, J. C. Wilson, Carl Raiss & Co., I think are stock brokers, and I think Harris Winthrop & Company are New York people, but I do not know the others, outside of J. C. Kirkpatrick.

The paper now shown me is an abstract of title of the stock held by Rudolph Herold, Jr., from time to time, and prepared in the same way as the others; the other parties named I do not know, except J. C. Wilson, who I understand is a broker.

Said statement was introduced in evidence, marked Plaintiff's Exhibit 11-P - LL, and is as follows:
[3027]

“ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
RUDOLPH HERALD, JR.

- - - - -

ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
2/1/09	David S. Bachman	A-20730	20
"	David S. Bachman, Tr.	A-20731	20
9/14/09	J. C. Wilson, Tr.	A-21989	25
"	do.	A-21990	15
			<hr/>
			80
11/18/09	W. S. Porter, et al,		
	Tr.	D-2214 to 2216	100
11/24/09	do.	D-2331 & 32	50
6/7/10	Rudolph Herold, Jr.	D-11137 to 11141	150
4/6/12	J. C. Wilson	E-11100 to 11102	300
"	do.	D-18344 to 18346	50
			<hr/>
			650

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
11/18/09	Rudolph Herold, Jr.	A-20730	20
	do.	A-20731	20
	do.	A-21989	25
	do.	A-21990	15
			<hr/>
			80
6/7/10	Rudolph Herold, Jr.	D-2331 & 2332	50
	do.	D-2214 - 2216	100
			<hr/>
			150

The paper which you now hold is the abstract of title of the stock of F. G. Drum, also prepared in the

same way, and is correct; it shows that on March 19, 1912, he acquired a hundred shares from Sutro & Company.

The statement last referred to was offered in evidence, marked Plaintiff's Exhibit 11-Q - LL, and is as follows:

ABSTRACT OF TITLE OF STOCK IN ASSO-
CIATED OIL COMPANY HELD BY
F. G. DRUM

ISSUED

<i>Date</i>	<i>From</i>	<i>Cert. No.</i>	<i>Shares</i>
3/19/12	Sutro & Co.	E-10911	100

CANCELLED

<i>Date</i>	<i>To</i>	<i>Cert. No.</i>	<i>Shares</i>
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To clear up the record as to my testimony the other day, regarding the discrepancy referring to Mr. Dumble, the original memorandum was prepared after reference to the indexes of the several ledgers; we have since gone through the ledgers, account [3028] for account, and found the additional transfers and acquisition, as reflected by this statement, the amended statement.

The defendants thereupon moved that the entire testimony here given by this witness be stricken from the record, on the ground that it is not relevant to any of the issues in this case, inasmuch as it does not tend to prove or establish or support any of the allegations of the complaint; and on the ground that it is not rebuttal, inasmuch as it does not deny, answer,

I wrote to the Associated Oil Company June 1, 1911, showing receipt of a paper, and I signed "Trust Officer" on behalf of Union Trust Company.

Said letter was introduced in evidence, marked Plain- [3030] tiff's Exhibit 7-N - LL, and is as follows:

"Escrow 399

Associated Oil Company, Wells Fargo Building,
San Francisco, Cal.

Dear Sirs:

Attention of Miss G. Sheridan Secretary.

We have your favor of the 26th ultimo, enclosing agreement between J. E. Baker, and others, parties of the first part, and W. S. Badger, party of the second part, dated April 25th, 1911, notifying our escrows Nos. 399-402 inclusive.

Yours truly

.....

G.K

Trust Officer."

I identify the next paper as a letter received by the Union Trust Company of San Francisco from the Associated Oil Company, transmitting the modification which I mentioned awhile ago as Plaintiff's Exhibit 7-N - LL which was in reply to this.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-O - LL, being a letter dated May 26, 1911, from G. Sheridan, Secretary of the Associated Oil Company to the Union Trust Company of San Francisco, concerning the instructions mentioned, and directing amendment of the same.

Plaintiff introduced in evidence escrow instruc-

tions modifying the above-mentioned instructions, and the same were marked Plaintiff's Exhibit 7-P - LL.

In connection with said last-named exhibit, plaintiff introduced in evidence assignment, dated May 26, 1911, from W. S. Badger, transferring to the Associated Oil Company the contract and lease dated April 26, 1911, and the original contract of June 9, 1910. This was marked Plaintiff's Exhibit 7-P - LL.

The papers you have in your hand constitute eight deeds, John D. Cage to W. F. Herrin, dated July 1, 1910; Miss Emma Cage to W. S. Porter, July 1, 1910; W. F. Phillips to J. C. Kirkpatrick, July 1, 1910; Mrs. Lenora Cage to R. P. Schwerin, July 1, 1910; Richard Dougherty to O. Scribner, July 1, 1910; J. L. Reed to Paul Shoup, July 1, 1910; J. A. Ross to Rudolph Herold, Jr., July 1, 1910; and J. E. Baker to Frank H. Buck, July 1, 1910, which [3031] are the several papers referred to in the escrow papers just introduced; they are the original papers handed to the Union Trust Company by W. S. Badger on behalf of the parties he represented, and were so accepted and received by the Union Trust Company; Of the several grantees named I know Mr. Herrin and Mr. Porter; Mr. Schwerin I have seen, but do not know him personally; Mr. Kirkpatrick I have no personal acquaintance with; Mr. Scribner I know very well, also Mr. Shoup; I think I have met Mr. Buck, but am not sure, and I don't know Mr. Herold; Mr. Herrin is the same W. F. Herrin who is general counsel of the Southern Pacific Company, I assume; and he is the

same Herrin who is president of the Associated Oil Company.

Plaintiff introduced in evidence a deed dated July 1, 1910, John D. Cage to W. F. Herrin, and marked Plaintiff's Exhibit 7-Q - LL, of the northwest quarter of Section 30, Township 30 South, Range 24 East, M. D. B. & M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-R - LL, being a deed from Emma Cage to W. S. Porter, dated July 1, 1910, of her interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M.D.M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-S - LL, being deed from W .F. Phillips to J. C. Kirkpatrick, dated July 1, 1910, of his interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M.D.M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-T - LL, being deed from Mrs. Lenora Cage to R. P. Schwerin, dated July 1, 1910, of all her interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M.D.M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-U - LL, being deed from Richard Dougherty to O. Scribner, dated July 1, 1910, of all his interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M.D.M. [3032]

Plaintiff introduced in evidence Plaintiff's Exhibit 7-V - LL, being a deed dated July 1, 1910, from J. L. Reed to Paul Shoup, of all his interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M.D.M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-W - LL, being a deed from J. A. Ross to Rudolph Herold, Jr., of all his interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M. D. M.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-X - LL, being a deed from J. E. Baker to Frank H. Buck, dated July 1, 1910, of all his interest in the northwest quarter of Section 30, T. 30 S., R. 24 E., M. D. M.

I have also brought with me the papers relating to the escrow of the northeast quarter of Section 30, 30-24, and now produce them, covering escrow instructions similar in tenor to the instructions in the previous escrow, together with eight deeds accompanying the escrow; they are the identical original papers which were accepted on behalf of the Union Trust Company from W. S. Badger, representing the Associated Oil Company or other individuals.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-Y - LL, being escrow instructions last referred to.

Plaintiff introduced in evidence Plaintiff's Exhibit 7-Z - LL, being a deed dated July 1, 1910, John D. Cage to W. F. Herrin, of all his interest in the northeast quarter of Section 30, T. 30 S., R. 24 E., M. D. M.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-A - LL, being a deed dated July 1, 1910, Miss Emma Cage to W. S. Porter, of all her interest in the northeast quarter of Section 30, T. 30 S., R. 24 E., M. D. M.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-B - LL, being a deed dated July 1, 1910, W. F.

ips to J. C. Kirkpatrick, of all his interest in the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-O - LL, being a deed of the same date, Miss Emma Cage to W. S. Porter, of all her interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-P - LL, being a deed of the same date, John D. Cage to W. F. Herrin, of all his interest in and to the same property.

I have brought with me also the escrow papers relating to the southeast quarter of Section 30, of Township 30 South, Range 24 East, M. D. M., which you now have, being the identical and original papers which the Union Trust Company accepted from Mr. Badger, consisting of a letter of escrow instructions, and [3035] eight deeds, as follows: John D. Cage to W. F. Herrin; Miss Emma Cage to W. S. Porter; W. F. Phillips to J. C. Kirkpatrick; Mrs. Lenora Cage to R. P. Schwerin; Richard Dougherty to O Scribner; J. L. Reed to Paul Shoup; J. A. Ross to Rudolph Herold, Jr.; and J. E. Baker to Frank H. Buck.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-Q - LL, being letter of escrow instructions last referred to.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-R - LL, being a deed, dated July 1, 1910, John D. Cage to W. F. Herrin, of all his interest in and to the southeast quarter of Section 30, Township 30 South, Range twenty-four (24) M. D. M.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-S - LL, being a deed, dated the same as Exhibit 8-R-LL, Miss Emma Cage to W. S. Porter, of all her interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-T - LL, being a deed, of the same date, W. F. Phillips, to J. C. Kirkpatrick, of all his interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-U - LL, being a deed, of the same date, Mrs. Lenora Cage to R. P. Schwerin, of all her interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-V - LL, being a deed, of the same date, Richard Dougherty to O. Scribner, of all his interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-W - LL, being a deed, of the same date, J. L. Reed to Paul Shoup, of all his interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-X - LL, being a deed, of the same date, J. L. Ross to Rudolph Herold, Jr., of all his interest in and to the same property.

Plaintiff introduced in evidence Plaintiff's Exhibit 8-Y, being a deed, of the same date, J. E. Baker to Frank H. Buck, [3036] of all his interest in and to the same property.

I have produced all of the papers of which I have any knowledge consituting that escrow.

Cross-Examination.

None of these escrows have ever been taken up; I believe they have all expired by limitation.

The defendants thereupon moved to strike out all of the testimony of this witness, and all of the documentary evidence introduced in connection with his testimony, on the ground, first, that the same was not rebuttal; second, that it was irrelevant; third, that it was incompetent; in that it consisted of hearsay testimony, of transactions between persons not parties to this action, or agents, representatives or parties to this action.

The defendants duly objected to all of the testimony and documentary evidence introduced by this witness, upon the grounds that the same was irrelevant and immaterial; that it is not rebuttal of any testimony introduced on behalf of the defendants; that it is hearsay; that it relates to transactions between persons other than defendants in this action, but not questioning the accuracy of the exhibits, so far as the Associated Oil Company is concerned; and upon the ground that the evidence is not the best evidence so far as concerns the books of said company and the books of the Union Trust Company. [3037]

J. W. KINGSBURY, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am mineral inspector for the United States General Land Office, and my profession is geologist. I graduated from the University of Utah, taking

courses pertaining to mining engineering and obtaining a B. S. degree. Then I specialized in geology at Columbia and took minor courses in mining and metallurgy and obtained a M. S. degree at the Columbia University of the City of New York. I graduated from the University of Utah in the spring of 1903 and went to Columbia between 1905 and 1907 and in the spring of 1907 obtained the master's degree. Prof. Moses was at the head of the Department of Mineralogy at Columbia University. The duties of a United States Mineral Inspector are to examine land and ascertain if it is mineral; and also to examine mining claims for which mineral applications for patent have been made to see if they comply with the rules and regulations and see if it is mineral. I have been connected with the United States Land Office in that capacity since the latter part of May, 1909, and was stationed most of the time in California; about a year of the time in Utah. I have examined land containing coal, copper, gold, byerite, gypsum, nitrogen, and petroleum, and [3038] other hydrocarbons,—gas and asphaltum. I have visited, officially, for the Land Office, in connection with my work, the lands which are involved in this suit. The first time I went onto the lands in the Elk Hills was in December, 1910. I went there on the morning of December 6th and left in the afternoon of December 7th. At that time the Associated Oil Company had men working in the hills on either Section 24 or 26 of Township 30 South, Range 23 East, and from a distance I saw men working about Section 30 of Township 30 South, Range 24

East. I saw men drilling on Section 36, Township 30 South, Range 23 East, and on Section 30, Township 30 South, Range 24 East. I don't know whether they were drilling on Section 24 of Township 30 South, Range 23 East. The next time I went into the Elk Hills was on June 10, 1911, and then again in January, 1912, and in November, 1912, and April, 1913. Before my visit in June, 1911, I had heard that oil had been discovered on Section 26 and I went up there to see. I found men were working there and the derrick had been spattered with oil, and there was some oil on the tools coming out of the well, that is, the rotary drill pipe.

(It was stipulated between counsel that the testimony of this witness was considered as objected to by the defendants on the ground it is not rebuttal and is not relevant to any of the issues of this case.)

At that time I met representatives of the Associated Oil Company on the lands in the Elk Hills; I met L. J. King and Mr. Barnes and Mr. W. O. Maxwell. Mr. L. J. King was superintendent of the Associated Oil [3039] Company. I had a conversation with Mr. King about the discovery of oil on those lands. I remember speaking to Mr. King and asking him for permission to look at the well, and at the same time he informed me that there had been a discovery of a great amount of oil on Section 30, in Township 30 South, Range 24 East, in one of the Associated Oil Company's wells. I went with Mr. King and Mr. Maxwell onto Section 30 to look at the well and saw oil coming from the well, which I esti-

mated at about 2000 barrels in twenty-four hours. Mr. Maxwell said that he thought it was about 5000 barrels per twenty-four hours. There were a number of men working around the well and also a short distance to the southwest of the well laying a four-inch pipe line toward the well on Section 26, in Township 30 South, Range 23 East. On my visit in January, 1913, to the Elk Hills, I found all of the section corners of the lands involved, and most of the quarter section corners; I also located the wells and derricks, a number of wells and derricks in that vicinity. When I mention the section corners, I mean of the lands involved in this suit. That would not include all the corners in Section 30, Township 30-24, but all of the lands involved in Township 30-23 and two of the corners of Section 30, 30-24. I also observed oil in a sump to the west of the well on Section 36, 30-23. I noticed gas escaping from the well on Section 24, 30-23. At that time I couldn't say just what quantity of oil I did see in the sump to the west of the well on Section 26; it was quite a large quantity. What I have been testifying to was not altogether in January; it was [3040] somewhat into February, but on January 24th I went out with Mr. McCabe, head driller of the Associated Oil Company and I gauged the well on Section 30, 30-24, and according to my gauge it was producing 385 barrels per twenty-four hours and the gravity of the oil was 24.2 Baume. A cut of that oil was made at the laboratory of the Associated Oil Company at the Pioneer-Midway Camp, and it showed about 2.1 per cent. water and 6.2 per cent.

base settlement. I was present when that cut was made. The time when I located the section corners was in January and February and at that time during that period I located the derricks in the different portions of the sections involved. In November, 1912. I crossed over those lands and worked to the east of them for about four days. At that time the Associated Oil Company had three watchmen there watching the wells on Sections 24 and 26, Township 30 South, 24 East, and also the drilling material and such. I visited the lands in April, 1913, and examined the wells at that time on these three sections; that is, the wells in which oil had been discovered, to wit: Sections 26 and 24, 30-23, and Section 30, 30-24.

I took photographs showing the condition of the wells at that time. I have had the negatives completed and the photographs made; I had them fixed up and enlarged. These photographs were taken with a standard lens by me.

This one is a photograph of the derrick over Associated Oil Company's well No. 1, southeast quarter of Section 26, 30-23, and was taken on that trip in April, 1913. [3041] It correctly and substantially delineates the conditions as they existed there at that time. The derrick is about 82 feet high. Said photograph last referred to is introduced in evidence and marked Plaintiff's Exhibit 11-R-LL.

This photograph I am now looking at shows a portion of rig over well No. 1 in the southeast quarter of Section 26, Township 30 South, Range 23 East,

the oil tanks, pump, pipe lines, boilers and cook houses. Said photograph is introduced in evidence and marked Plaintiff's Exhibit 11-S-LL.

Both exhibits 11-R and 11-S, being the exhibits just introduced, are of Associated Well No. 1 in the Elk Hills. One picture is of the derrick and the other shows the pump, oil tanks, pipe lines, boilers and so forth.

This photograph shows a portion of the sump containing oil belonging to the Associated Oil Company west of Well No. 1, southeast quarter of Section 26, 30-23, and the surrounding land and some derricks in the distance on Section 26. Said photograph is introduced in evidence and marked Plaintiff's Exhibit 11-T-LL.

The embankment shown at the left-hand side of 11-T is approximately 160 feet long; the surface of the oil there was about 60 feet wide at the left-hand, or west side, and about 60 feet up the canyon; the depth where the pole is shown is about 4 feet; the blackened margin of this sump was oil-soaked, indicating that at some time it had considerably more oil in the sump; or it might have been caused by water raising the oil up and blackening the sides in that way; I made no test to see whether all the material I saw was oil or water; I mean to be understood as saying that it was all oil as far as I know. I don't absolutely know that it is oil. I didn't see any water in there. There was no pipe line leading from Well No. 1 to the sump shown in Plaintiff's Exhibit 11-T. There was a ditch and pipe out at the side coming

down and running towards the sump hole. There was an outlet from the well to carry [3042] the oil into the sump and that outlet was both a pipe and a ditch. The ditch was oil-soaked. On my last investigation there was some oil running into that sump from the well.

I now show you a photograph of the inside of the derrick on well No. 1, on the southeast quarter of Section 26, 30-23, showing the two gates and pressure valve; the gates were located by chains running through handles and around the pipes, and fastened with a padlock; the pressure shown was 320 pounds; the derrick had been spattered with oil, but at this time it was dry; the dark places in the picture are caused by the dark place where I took it; although it is spattered with oil. It would look dark if it had been in the light. It was covered with spattered oil clear to the top. The gates were entirely closed at the time I was there in April, but there was a little gas escaping at some points, but I did not locate it.

All the photographs which you have shown and introduced at this time were taken by me on April, 1913.

Said last-mentioned photograph introduced in evidence, and marked Plaintiff's Exhibit 11-U-LL.

The photograph now shown me represents a portion of the sump containing oil belonging to the Associated Oil Company of well No. 3, in the southwest quarter of section 24, 30-23; the embankment shown is 180 feet long at the top; from the surface of the oil to the top of the embankment is about 12 or 15

feet; I do not know how deep the oil is below the surface.

Said photograph introduced in evidence, and marked Plaintiff's Exhibit 11-V-LL.

My recollection is that the oil extended about 50 feet up the canyon at that time; from the surface of the oil to the highest point of saturation on the margin of the sump was, vertically, about 2 feet; that blackened space shown on the photograph was saturated with oil. I do not know whether there was water under [3043] the oil, or not; they generally have a pipe at the bottom of a sump to let the water out, but the pipe in this sump was closed.

(The defendants make the same objection that was made to the introduction of the other exhibit purporting to represent a sump hole, which, of course, is understood to be in addition to all the general objections, which are not waived to any of this testimony.)

All the photographs already introduced, and the three which I now hold in my hand, were made by me in April, 1913, and developed in the same way as I have testified to in regard to the first photograph. They were taken by me and I took them to the Owl Drug Store, where I had them developed; and I examined them and then had enlargements made.

The photograph now shown me shows the rig over the Associated oil well No. 3, in the southeast quarter of section 24, 30-23, and the contrast of the land surrounding the well, which has been stained with oil, and that which has not been stained, and a small por-

tion of the sump; that up around the well, the blackened portion of the earth; the derrick was covered with oil-stains all the way up, spattered;

Said photograph introduced in evidence, and marked Plaintiff's Exhibit 11-W-LL.

The next photograph shows me in a picture of a pump at a sump a short distance east of the Associated Oil Company's well No. 1, in the southwest quarter of section 30, 30-24; this pump was connected with the four-inch pipe-line referred to by me; it was right over the sump, and connected therewith by a pipe; it was not in operation at that time; it was connected to a boiler; some men were working around section 26, but it cannot be determined how long since this pump had been operated.

Said photograph introduced in evidence, and marked Plaintiff's Exhibit 11-X-LL. [3044]

Here is a photograph showing the derrick over the Associated Oil Company's well No. 1, in the southwest quarter of Section 30, 30-24, and an oil tank, in which the production of the well was gauged January 24, 1912; I do not think this derrick was covered with oil.

Said photograph introduced in evidence, and marked Plaintiff's Exhibit 11-Y-LL.

In Plaintiff's Exhibit 11-W, under the derrick are a couple of gates connected with the casing from the well, and a pressure gauge; the gates were locked with chains the same as in Section 26; all three wells on the three sections mentioned were capped; I could hear gas escaping from the wells on section 24, in

30-23, and section 26, 30-23, I am sure, and I think gas was escaping from the well on section 30, 30-24; men were working around the wells painting the boilers and fixing them up, for the Associated Oil Company; none of the wells appeared to have been abandoned; they had the appearance of being closed down, that is all; in well No. 1 of section 26, 30-23 oil was coming out between the casing and running into the sump about 300 feet away; the pressure gauge showed 320 pounds; I estimated 400 barrels of oil in that sump at that time, on section 26; at the sump on section 30, well No. 1, of 30-24, the margin was blackened up several feet vertically, indicating that there had been more oil in it; it had a little oil in it at that time; the well on sections 26 and 30 were connected to the tanks near them with four-inch pipeline; there was a sign on the derrick over section 30, saying "Associated Oil Company's Well No. 1, Section 30, 30-24"; then there were some tanks down near the Pioneer Midway which the four-inch pipe line had been connected to at one time, bearing in big letters "P. M. O. Company", and a notice to employees signed by J. L. King, Superintendent, warning employees against matches; smoking and such things as that; there was also a statement of danger as to gas and oil; this was down near Fellows; the [3045] diameter of these tanks, I should judge, was about 50 feet, and the height 15 feet; they were of steel; the pressure gauge on the well on section 24 showed a gas pressure of 287 pounds; gas was escaping; At the request of Mr. Mills I examined the

record of this case showing alleged daily drilling reports on the three wells mentioned, introduced in the testimony of Mr. W. E. White, and constructed graphic logs based on those reports and telegrams; I took a certain scale, and put them down to scale; put down everything shown in the daily drilling reports shown in defendants' exhibits 175, 176 and 177, and gave the different distances of the different formations passed through, and the kind of formation; on the telegrams I added data by marginal notes; my data was all taken from the defendants' evidence except the red-ink notation between 3342 and 3465 feet, entitled "Oil formation. See above notes, March 10, 1911." This notation was taken from Mr. White's letter of March 10, 1911, filed as an exhibit herein, addressed to the Associated Oil Company by Mr. King.

Said log introduced in evidence, and marked Plaintiff's exhibit 11-Z-LL.

(It was stipulated between counsel that defendants reserved the right to make any additional objections to those already made, to this line of testimony, until the logs had been checked by the defendants' counsel.)

The paper you now hold is a similar log of well No. 3 in section 24, 30-23, and was prepared by me.

Said log introduced in evidence, marked Plaintiff's Exhibit 12-A-LL.

The telegram forming the basis of my red-ink notation on this exhibit 12-A was found in the record of Mr. W. E. White, and was sent from the field of

the company in the office in San Francisco, stating: "Flowing through six-inch casing spasmodically. Put out great quantity of oil sand. Also making good clean oil. Production [3046] at lowest figure 780 barrels oil yesterday. Without doubt will increase in flow." It was dated June 17, 1912.

The log next shown me is of the well on section 30, of 30-24, well No. 1, and was prepared in the same way.

Said log introduced in evidence and marked Plaintiff's Exhibit 12-B-LL.

From the comparison of the graphic logs prepared by me from the alleged daily drilling reports of the Associated oil wells on these three sections of land with the graphic logs constituting Defendants' Exhibits 175, 176 and 177, the differences in general are that the logs introduced by defendants aren't in detail, showing the different formations passed through as shown on the daily drilling reports, while my logs are. And then there are some other startling differences as to oil formations and such things. Defendants' Exhibits 175, 176, and 177 are not exactly correct logs or graphic pictures of logs even assuming the daily drilling reports introduced through the testimony of W. E. White, defendants' witness, is to be correct. The defendants' logs last referred to show oil sands in well No. 1 on Section 26 at the depth between 3850 feet down to 4030 feet with a little shell near about 3975 feet. My log shows the oil sand in that locality, with part of it shale in a couple of places. The log of the defendants in general is

correct at that depth. The defendants' log has a note here stating, "First showing of [3047] oil at 3342 feet", and it does not show oil sand at all from 3342 feet to 3465 feet. It shows shale. From the depth of 590 feet to 2432 feet the defendants' log shows, in formation, shale, blue shale, rock. It does not make any mention at all of the occurrence of boulders. By reference to the log prepared by me, Plaintiff's Exhibit 11-Z, the daily drilling reports show the occurrence of boulders between those depths in ten different places. The occurrence of boulders, geologically, is the indication of shore conditions. Defendants' log for this well, Defendants' Exhibit 176, between the depths of 3596 feet and 3774 feet, shows shale, shell; and at 3596 feet it shows compact sand, but does not show any trace of oil from 3596 feet to 3644 feet. The daily drilling reports, by reference to my log, show a trace of oil all through there. The defendants' log as to that well does not in any way indicate the true conditions as shown by the daily drilling report. Examining defendants' exhibit 175, the formation indicated as having been passed through between 1602 feet down to 1610 feet is shale, and the log prepared by me from the daily drilling reports for that depth shows clay and boulders. Between 1628 feet and 2080 feet, the defendants' log shows hard and soft shale. The daily drilling reports show, from 1628 feet to 1647 feet, shale and boulders; from 1647 to 1658, blue clay; from 1658 to 1666, hard shale; 1666 to 1710, blue clay; from 1710 to 2012, blue shale; from 2012 to 2031, soft blue shale and boulders;

from 2031 to 2080, shows blue shale. Assuming the daily [3048] drilling reports to be correct, Defendants' Exhibit 175 is not a correct picture of the formation passed through for the depths mentioned. Defendants' Exhibit 175, between the depth of 2525 feet to 2550 feet, does not show any occurrence of boulders. The daily drilling reports indicate the occurrence of boulders at that depth and those boulders indicate shore conditions there—sand and boulders from 2545 to 2550 feet. Defendants' Exhibit 175, between the depths of 2835 feet and 2845 feet, shows no indications of gas between those depths. The daily drilling reports, upon which that log is presumably based, by reference to my log, show there was gas struck between those depths. The daily drilling reports referred to, or the defendants' log for the well, does not show any oil-bearing formations were encountered at or near the bottom of the well. The daily telegrams sent to the Associated office from the field, from my examination of them, as to that depth, show oil-bearing formations were encountered and that considerable oil was discovered and also considerable oil sand. The defendants' log, the Associated log, does not show oil sand at or near the bottom of the well; nor do the daily drilling reports show any oil sand. When I am asked what the occurrence of oil sand instead of oil shale would indicate geologically, I would answer: Well, sand is a better formation for oil to accumulate in, as the more minute holes are not so compact as the shale. Also it would indicate that it was deposited near a

shore in the shale. Defendants' Exhibit 177, at the depth [3049] between 344 feet and 390 feet, does not show the occurrence of any gas. The daily drilling reports, by reference to my log, Plaintiff's Exhibit 12-B, show the occurrence of gas between those depths. Defendants' Exhibit 177, does not show any gas between 515 feet and 520 feet. By reference to my log as to that well, between those depths, the daily drilling reports show sand and gas. Defendants' Exhibit 177, between the depths of 2125 and 2200 feet, shows shale, but no boulders. By reference to my log, prepared from the daily drilling reports, those reports indicate the occurrence of shale and boulders between those depths. Between the depths of 2710 feet and 2720 feet, the defendants' log, Exhibit 177, shows hard oil sand, showing lots of oil. The daily drilling reports show hard oil sand from 2711 to 2713 feet, showing lots of oil. From 2819 to 3058 feet, or a distance of 239 feet, the daily drilling reports show blue shale showing oil for the entire depth. The defendants' log, Exhibit 177, gives a showing of oil at about 2915 feet. Plaintiff's Exhibit 11-Z was not made up entirely from the daily drilling reports, but I obtained the information which is inserted in red ink between the depths 3342 and 3465 from a letter. That information is contained in a daily drilling report of March 10, of 1911. Speaking generally of the three sump holes constituting the earthen reservoir for the reception of oil from these several wells of the Associated Oil Company, which we discussed this morning, I know from my

examination on the last date that I was out in the Elk Hills that provision was made by [3050] pipes to carry off the water which might have collected in the sumps. As to the condition of the well on Section 30, of 30-24, I was there when it was about 2422 feet deep and the well at that time was flowing. It was gushing; it was showing out of a spigot—direct flow. I traced the axis of the anticline crossing Township 30-23 at the time I was there. When I am asked what relation the lands in suit bear to that anticline with reference to the lands that we have been discussing, that is, Section 24 and 26 of Township 30-23, and Section 30, Township 30-24, my answer is, they have a similar relation to it and they are all on the same anticlinal structure. The sections of land in this suit are parts of Section 15, 17 and 19, all of Section 21, 23, 25, 27, 29, 33 and 35 of Township 30, South, Range 23 East.

CROSS-EXAMINATION OF J. W. KINGSBURY

My connection with the Department of the Interior as a mineral inspector began in 1909, in the latter part of May; I was at first assigned to Utah territory, with headquarters at Salt Lake City, to examine it as to coal and other hydrocarbons and metallic minerals, including ozokerite and Gilsonite, but not petroleum; I was stationed at Salt Lake City until August, 1910; then I went to San Francisco, as a practical miner for the Government; I had worked in mines in Utah, and also a little work in some mines in Nevada and Mexico; I was a mucker, timber-man,

timber-man helper, time-keeper, sampler, assistant in surveying, and surveying, and assisting in mine examinations; the mines were copper, gold, lead [3051] and silver; I assisted in examining a copper mine at Yearington, Nevada; I think I got the title Mineral Inspector after I went to San Francisco, at first working on the mother lode, gold and placer; continued that until December, 1910, then went into the oil fields; the general nature of my work in the oil fields has been examining lands to see if they were oil-bearing, and to see if the requirements were fulfilled where patents were applied for; at first I was not qualified for this work; I had a pretty good education in geology, and after looking into the situation to some extent I thought I was qualified; my work has been entirely for the Government while in California; I have never located any wells, or had anything to do with drilling them; I have watched drilling, both with rotary and standard drills, and have studied logs produced by each; I have made a study, and there is usually a great difference between the two in the same locality.

I have studied the terminology of different drillers, and find that they differ considerably; I would not feel safe in accepting the terminology of every driller as to some formations; such as boulders, and where they run into the hard rock I would feel pretty safe, but as to clays and gumbo and shales I would not; the various terms used by drillers I would feel safe in relying upon the use of the word "boulder,"—pretty safe.

I have never had occasion to examine the logs of two wells drilled very close together, say within three hundred feet, one of which was drilled with a Standard rig and the other with a rotary; if two wells were drilled, one with a Rotary and one with a Standard drill, one reporting boulders and the other not, I would judge that there were boulders in the vicinity, although the Standard tools probably missed them; they might go in on a number of wells and miss the boulders, while in another well you might strike them; you can usually tell when you hit them; I have never handled a drill when it struck a boulder, and never saw either of [3052] these drills strike a real boulder, but have seen the logs and have seen the trouble they had with such things; I cannot recollect just the number of logs that I have had occasion to construct, but it would go up to twenty, anyway, including those that I took from the drilling reports in the Elk Hills; I have examined many others; I found no fixed system in the construction of various logs which I have examined; they depend a great deal upon the interpretation of drillers, and those who compile the reports of the drillers; sometimes drillers term oil as a trace of oil, and sometimes they get a color, and call that a trace of oil, but the color is not always produce by oil; a little iron, or manganese might produce it; iron stain becomes hard, and when you mix it up it will break, while oil will follow your stick and come together again; I have forgotten just what manganese will do; I did know.

It often happens that "traces of oil" are reported

erroneously; I have an idea that I have examined materials said to be from the drilling of boulders reported in logs, but don't recollect just where; in some cases it came out in pretty good sized pieces of granite or igneous rock; I could tell with a microscope what kind of igneous rock it was, but did not do so; I don't recollect where I observed granitic material brought out from a boulder, but I know it was from rock in place, because they found oil below the place, and generally you consider that when you strike granite in place you are not going to find any sedimentary formations below that; I explain the occurrence of igneous rock that is not granite by saying that igneous rock has been washed there too; if you find—it depends on the kind of igneous rock you find whether you could find any sedimentary rock below; I can tell shale and broken shell from igneous rock.

I did not make any examination of the alleged boulders to which I referred in my direct examination, in the Elk Hills; I started to get data in this case about the middle of July last; [3053] I got my information from the testimony of drilling reports, and need no data outside of that; I was engaged in the operation of these logs about two weeks; I endeavored to construct them upon the same scale as the Associated Oil Company's logs introduced in evidence, and had them about completed a week ago; I had the prints made before that, but corrected and colored them; I missed the formation in two or three places; Mr. King, of the Associated, handed me logs of these wells, I think, in 1911 and 1912.

In 1912 I assisted in measuring the flow from the well in section 30; and was afforded every facility for making this measurement; in subsequent trips to the fields I found pressure gauges upon the wells indicating the pressure; they were not placed there by myself; they were there, and were not concealed from observation; they allowed me to go in there, and the gauges were open to observation; I always told them that I was a mineral inspector of the General Land Office, and it was generally known to all the employees.

I have no objection to the logs of the Associated Oil Company so far as they go; in a number of places they wrote the notes on the side, and in one instance stopped at a certain place, and a little later I picked up telegrams showing great improvement in the well, which I have indicated on the chart; to some extent the logs of the Associated Oil Company are misleading as to whether or not it is oil formation, but I do not think they are intentionally misleading; by "startling difference" between their logs and mine, I meant it was rather startling that they did not show some of the boulders; then in log of Well No. 1, Section 26, 30-23, in a side note on the log introduced by the defendants, the log shows oil formation from 3475 to 3490, while the drilling report shows, "We have washed the oil formation from 3342 to 3485 feet."; then from 3725 to 3848 feet, the log introduced by defendants of this same well No. 1, section 26, 30-23, shows shale, [3054] while the daily drilling reports show that the formation from 3742 to 3848 feet

contained some oil, and when I am asked: "Do you consider that an absolutely essential discrepancy?", "Couldn't shale contain oil?", my answer is: "I say they didn't show by the defendants' logs that the formation contained oil." This well No. 3, Section 24, 30-24, from 1602 to 1610 feet, by the log introduced by the defendants, shows shale, while the daily drilling reports show clay and boulders. The omission of the boulders certainly is a startling fact. Again, between 1628 feet and 2880 feet, the defendants' log shows shale, while the daily drilling reports show shale and boulders between 2012 feet and 2031 feet. Again, between 2525 feet and 2550 feet, defendants' log gives hard sand, while the drilling reports show hard sand and boulders. It is evidence there that in each of those cases the startling fact is the omission of boulders. Again, between 2835 feet [3055] and 2843 feet, the daily drilling reports show shale with a little gas, while the defendants' logs do not show any gas in this locality—at this point in the well, and the omission of the gas is the startling fact. I consider these as important discrepancies. In defendants' exhibit 175, log on well No. 3, Section 24, on the side notes they give a number of telegrams and end up with June 4th, where they "Pumped 90 barrels of oil and 10 barrels of mud. Shows great improvement," etc. Going on, there are other telegrams. They didn't put down, especially on June 13th, 1912, where it states: "Well flowed almost continuously merely pulling tubing. At the present time making eight or nine hundred barrels." I con-

sidered that as one of the startling discrepancies. Again, on June 17th, 1912, they have a telegram: "Flowing through six-inch casing spasmodically." That appears on defendants' exhibit 175. I will finish the telegram: "Put out great quantities of oil sand. Also making good clean oil. Produced at lowest figure 750 barrels of oil yesterday. Without doubt will increase in flow." The oil sand which was put out by the well,—it seemed as though they passed through that without seeing it. Defendants' exhibit 175 does not show that in any respect. Then, well No. 1, Section 30, 30-24, by defendants' log of this well, from 344 to 390 feet, shows no gas, while the drilling reports show some gas. Again, in 515 to 520 feet, the daily drilling reports show some sand and gas, while the defendants' log does not show any gas. From 2125 feet to 2200 feet, the daily drilling reports show shale and boulders, while the defendants' log [3056] shows shale. From 2819 to 3085 feet, the daily drilling reports show "blue shale, showing of oil", while the defendants' log gives a showing of oil at about 2915 feet, and shale. That is about the discrepancies I found and I was referring to those discrepancies when I spoke of the startling differences between the defendants' logs and my logs. I would have to know who made up the log before I could say the omission was or was not intentional. I was told to prepare my logs in detail from the daily drilling reports and then compare my logs with those introduced by the defendants; when a log shows items of production I think it should show all; it is

not a fact that I picked out a single telegram and have overlooked and intentionally passed by a great number of other telegrams showing a progressive diminution in the production of oil from the well in Section 24. It does diminish after that, but the reason for the diminution is that the sand came in, clogged it up, the bit was lost in the well, and they could not clean it out; then there is one thing here that I did not show on the log which is of as much importance or more than what I have shown; that is the telegram of August 12, 1912, that the well would produce 3,200,000 cubic feet of gas along with the oil in a day; this was omitted because I thought I was putting on representative conditions; it was a matter of interpretation on my part, so I picked out the highest reported production to put on my log, because it showed the oil sand there, and then this gas production is very important, which I did not show; I have placed on the margin of my log for section 24 the telegram of June 17, 1912, because it showed oil sand coming out, while that is not shown in the drilling reports or in the log of defendants; I got it from the telegram; Mr. Mills told me to put on the margin in red ink "oil sand instead of shale"; this was from 3600 to 3800 feet, but I did not note on my log that this well had been cased solidly down to 3865 feet prior to the time when this telegram was sent; Page 7651 of the record shows that the casing was [3057] perforated from 3700 feet up and this telegram was after that perforation and I consider that the sand came in some place in where the casing has been

perforated. Just the locality, I could not state. The casing was perforated between the two points of 2500 and 3700 feet. The perforations were three-quarters by one inch holes and there were two holes per foot. I would not expect this sand that I referred to as so important to come in below the 3700 foot level, and when I am asked: "Is your log, where you have indicated that as coming in below the 3700 foot level, correct?", I answer: "On my log I have made broken lines. I didn't expect it to be exact, exactly in that locality. It is somewhere around where the perforations were." I expected my attention to be called to this discrepancy. I expected to be asked about that. My log, as far as the different kinds of formation passed through, shown in the daily drilling reports, is not inaccurate. Referring to this particular portion of my log where I have in heavy red lines covered a space approximately between 3600 and 3800 feet and labeled it "oil sand instead of shale," I have it in broken heavy lines—red lines—and it does not represent the exact locality of the oil sand; but when I put it down I intended it to represent the oil sand in some place around there. It would be very hard to give the exact location of that because most likely that was masked when they passed through it with a drill. I have indicated on my log the perforations from 2500 to 3700. That is important to the man who is drilling, but not to the geologist; from a geological standpoint I considered the sand as the most important thing to my mind; I had it up on a side note, but when I finally located the

sand between 3600 and 3800 feet, I did not indicate the perforations so as to make my log intelligible to a geologist because I did not have the time; I intended to put the formations on; I do not know as there is a discrepancy in favor of Exhibit 175; I did not intend to show perforations; I intended to show the formations [3058] passed through as shown by the daily drilling reports.

In my log for the well in section 24 sand is shown at 3104 feet; it shows sand and shale in a couple of places; ten feet of sand, 3104 to 3114, fine sand; the well was perforated at that point; the daily drilling reports show sandy shale at another point; from the reports I would say that the shale was solid; the gas and oil going out through that would loosen it up some; you get lots of shale and mud coming up with oil, lots of times; this sand being forced up led me to conclude that the formation near the bottom of the well was sand in some locality; there was nothing to prevent sand coming in through the perforations opposite 2500 feet, and 3700 feet, but I think it would come below 2940 feet. I say that because the hole bridged over at that point on account of the sand and there is reason for assuming that that sand didn't come from the ten foot fine sand formation at 3104 feet, because in the telegram it states it is oil sand there. I don't know that they struck oil in that fine sand. The sand is merely the sponge in which the oil accumulates and there is no essential difference in the sand itself. If that sand that came out picked up oil from some other point coming from shale, you

couldn't tell from the appearance of the sand after it got out of the well, but I don't see how that sand would flow in there without being washed in there in some way or another. I refer to the sand at 3104 feet. The daily report does not state that they obtained any water at that time, any great amount which would wash that sand in. They generally state when they get the water how much water it is. They have in these telegrams; it could be forced in by gas; they do not state that they struck gas, but that is not conclusive that they did not strike gas; there might have been gas there that was released afterwards. I want to correct that statement. I was looking at the wrong part of the well. I find where they struck gas above there but not below. I do not find anywhere in the drilling reports or in the telegrams or in [3059] the daily letters in connection with this well on Section 24 any statement that the formation below 3104 feet contained sand at any point, only when they got out the oil sand; it may come from below, or it may come from above; and when you ask me: "Is there any good oil sand there?", my answer is: "I am taking the daily drilling reports and telegrams." The oil sand may have come from anywhere below 2904 feet, where the bridging occurred.

Q. You were asked this further question: "Q—What would that indicate, geologically—the occurrence of [3060] oil sand instead of oil shale? A—Well, sand is a better formation for oil to accumulate in, as the more minute holes are not so compact as the shale. Also it would indicate that it was de-

posited near a shore in the shale." Are you now able—

Q. By Mr. Mills—Is that what you said?

A. If I said that I didn't mean it.

Q. By Mr. Lewers—What did you mean? I don't want to have you mis-quoted.

A. Nearer the shore than the shale.

Q. Nearer the shore than the shale.

A. Than the shale would be.

Q. Then, in your opinion, basing your answer, as I understand it, entirely upon the telegram of June 17, 1912, you would say there was a shore line down there at about 3600 to 3800 feet—the well on Section 24?

A. Well, that shore line proposition is rather indefinite. The shore is progressive always. It either advances or retreats. It might have existed in that locality and have advanced on farther up to where they find the shore now, where it has been eroded out and they can see.

Q. Well, do you at this time think that this telegram of June 17, 1912, indicates shore line conditions at the point where you have put this red ink notation in the margin of your log?

A. Not at that point; no. It indicates the sand—that it was nearer the shore than the daily telegrams would indicate. [3061]

Q. By Mr. Mills—The daily what?

A. Or I mean the daily drilling reports would indicate.

Q. By Mr. Lewers—In order to reach the con-

clusion that shore line conditions exist there, you disregard entirely as false the daily drilling reports concerning the formation passed through, do you? I am directing your attention to the shore-line conditions which you spoke of in your testimony being at the bottom of the well in section 24, or near the bottom. In reaching the conclusion that such shore-line conditions exist there, you did disregard as false the daily drilling reports showing a shale formation down there, did you not?

A. Not as false, no.

Q. Then as mistaken?

A. I think they are probably mistaken in some locality.

Q. And your sole reason for so doing is the telegram of June 17th, 1912? Is that correct?

A. I stated, I think, to that answer, that sand occurring there would show that it would be nearer a shore-line than the shale. That is what I wished to convey.

My sole foundation for that conclusion with respect to this well near the bottom of it is this telegram of June 17, 1912, and that telegram would not be so apt to be mistaken as the drilling reports, for the sand came out of the well—it was seen—while in drilling with a rotary drill they may have taken some of the mud which they put in and it might have come out at that locality and [3062] called it—and thought it was shale they were passing through. Assuming that the telegram is mistaken, and the drilling reports not, then I would not have any foun-

dation right there for the conclusion as to the shore-line, although I think the shore-line existed in that locality at one time. The drilling reports show, in well 24, that on the 16th of July they were down to 3600 feet, and on the 21st of July, a period of five days, they were down 3793, and blue shale was reported in the daily drilling report for each of those days.

I do not think the drillers would likely be mistaken between shale and sand every day for five days; they might have been mistaken one or two days and missed the sand, and the telegram of June 17th might have referred to sand anywhere up to as high as 3904 feet, so it is possible for the drillers to have made an accurate report of shale at that point and the telegram also be accurate; but in drilling with a rotary drill the reports are not very accurate; a driller will know sand when he gets hold of it; there are a great number of cases where when they drill with a rotary drill they pass through sand without knowing it; I do not think they would pass through 200 feet of sand without knowing it; I did not want to represent 200 feet of sand on my log, but some sand; I wanted to indicate by the broken lines that it was approximate; that is the notation which Mr. Mills suggested that I add on the margin, to which I have referred before.

I would like to make a correction in my testimony of this morning, where I was asked if I thought the logs introduced by the defendants were intentionally incorrect or a misrepresentation, and wherein

I said I didn't think so; and by that I meant that I don't know; I know nothing about how they were got up. I don't mean to be understood as being willing to admit that they were gotten up in good faith—neither way; I don't mean to make any decision whatever.

My attention was first called to the telegram of June 17th, [3063] 1912, in July of this year, 1913, by reading it myself; my log of the well on section 24 was entirely my own work; it must have been a month after I had it blue-printed when I corrected it, as I did not have access to the records when it was printed; I had access to the record while preparing the material that went to make up the log as originally prepared; it was based upon a careful checking of the drilling reports; between 2056 and 2080 I have blue shale indicated, hard blue shale; at 2056 to 2080 hard blue shale is indicated, and 2157 to 2167, hard blue and brown shale; the drilling reports show the same; I did not have room, so put in hard blue and brown shale 2157 to 2175 feet, because the color does not amount to much, but this is designated out to the side as blue and brown; at 2312 to 2355 feet I have soft blue shale; from 2312 to 2390 I have hard blue shale; I am crossing out the word "hard" between 2312 and 2355, as that is blue shale; I don't want anything to go in wrong if I happened to miss it.

I note that beyond 2312 feet they drilled 43 feet in one day; it didn't look as though it was hard to drill, they went pretty fast, but I don't know that

it was soft shale; all things being equal the distance drilled in a day would have some bearing upon the determination of the quality of the shale; I don't know as this could be designated as soft shale, but it looks like good drilling shale; I have never done any drilling or had any experience in drilling with a rotary or any other kind of machine to know whether you can drill 43 feet per day in hard shale.

My log shows hard brown shale at 2415 to 2423 feet; at that point I inadvertently put down brown in place of blue; it does not show exactly what was found by the driller, as I intended it to; at 2423 to 2452 feet I have hard brown shale; the reports show hard blue shale 2431 to 2437; there again I have an error of the same kind; that also is an error in not showing what was recorded in the drilling reports, as I intended this log to show; between 2423 [3064] and 2452 feet I have a showing of some gas; that is an error; my log tends to exaggerate to that extent; there is a gas showing there, but not all of that; unless corrected, my log would be misleading to that extent.

Taking into consideration the small amount of the formation left out there, I should consider the defendants' log correct, in general, as to well in section 26, Exhibit 176, between 3850 and 4043 feet; I have on my log in red ink "Oil formation. See above notes, March 10th, 1911." I have not noted sand here; I took this from the daily drilling reports, and considered it as sandy shale, in one locality; I don't know whether there is sand there or not; I

only meant to convey the inference that it was oil formation.

Q. Do you find anything in the drilling reports to show that it is an oil formation between those places?

A. Can I get the drilling reports, please? Page 7343, the daily drilling report, the 10th day of March, 1911, in the remarks, an additional report of the same date, stating, "After washing mud out of the hole and washing oil formation at 3342 to 3485 with drill pipe, we pulled pipe out of hole. As last pipe came out gas blew nearly all water out of hole and 30 feet above derrick. Hole bridged over with sand at 2640 feet, stopping flow." That is where I got one of them. Now, there is another place.

Q. The same thing; there is another place, is there not?

Mr. Mills: Well, let him look it up and complete his answer.

A. On page 7626, for March 13th, afterwards, "No. 10" (in parenthesis), 1911, 3548 feet, leaving out a little, "after washing mud out of hole and washing oil formation at 3342 to 3485 with drill dipe," et cetera, it goes on: "Hole bridged over at 2640 feet, stopping flow." [3065]

Q. By Mr. Lewers—You based that statement, then, upon those two reports,—which are identical, are they not, in substance?

A. Yes sir.

Q. And on the basis of that, you made your no-

tation which appears at the upper right-hand side of your log for this well, did you not?

A. Yes sir; I did, on the basis of that. I am using this record here for the basis for all my log—everything you find.

Q. Do you think that the omission of that notation would be a defect in a log, Mr. Kingsbury, of that well?

A. Yes; I think that would be quite a defect.

Q. And that is such a defect as you have called a startling discrepancy, is it not.

A. Yes sir; it is a startling discrepancy.

Q. That is the chief discrepancy between your log of this well and the log of the Associated Oil Company for the same well, is it?

A. That is one of the big discrepancies.

Q. And that is one which you would term “startling,” is it?

A. Yes sir.

Q. I call your attention to Defendants' Exhibit 176, the Associated Oil Company log of this same well in Section 26, and ask you to examine the notes at the upper left-hand side of that log and say whether or not it says anything about this matter that you say is a startling discrepancy?

A. Yes sir; it does. [3066]

Q. Read what it says.

A. As the same is—I have got over here on mine.

Q. Well, will you read it, kindly?

A. “March 10th, depth 3548 feet, 4½-inch casing, 3168 feet washed mud from hole and washed oil

formation from 3342 feet to 3485 feet with drill pipe. Pulled drill pipe. Gas blew water 30 feet above derrick. Hole bridged with sand at 2640 feet, stopping flow." Of course there are discrepancies here. I believe, when I testified to that, I—noted that that occurred in this log of the defendants.

Q. Did you not mention that as one of the starting discrepancies between the two?

A. Yes sir; I believe I did. Also noticed these boulders here.

Q. Well, just a moment here. We will come to the other discrepancies. I want to finish with this one first. Is your notation concerning what happened on March 10th, 1911, correct? The one on your own log?

A. No sir. I have 3465 feet instead of 3485.

Q. In other words, this incorrect Associated Oil Company log gives 20 feet more of oil formation than you do?

A. Yes sir.

Q. From what do you conclude that that was all oil formation?

A. They state they washed the oil formation from 3342 to 3485 feet.

Q. Could they determine that it was oil formation in [3067] the process of washing?

A. No. I should think they had other information as to that which don't occur in the daily drilling reports.

Q. They, your conclusion is not based upon that

notation but is based upon a suspicion that they had other information, is it?

A. No; I have taken what was in the daily drilling reports.

Q. Do the daily drilling reports show oil formation between those points, 3342 and 3485?

A. The daily drilling report makes the report, on page 7343. They state that there is the oil formation there; they washed it.

Q. Now, you understood my question perfectly well. Aside from this report of washing, do the daily drilling reports show any oil formation between 3342 and 3485?

A. Aside from where they say they washed the oil formation?

Q. Yes.

A. They don't.

Q. Do the telegrams or letters or any other data that appears in the record, aside from this report of washing, show oil formations there?

A. Well, aside from where it states about washing that formation, I have not seen any other information.

Q. At whose suggestion was that red-ink notation of oil formation put on that log?

A. At Mr. Mills' suggestion.

Q. You had prepared the log without any such notation [3068] at that place, had you not, before that?

A. I had prepared the log with the notation up to the left-hand side—right-hand side—of the log,

showing this. Mr. Mills suggested that it would be good to have it down where the distances are shown; and I thought it would probably be pretty good, too.

Q. And you followed his suggestion?

A. It shows the accurate conditions.

Q. Was that put upon there for the purpose of creating the impression that there was sand there, —oil sand?

A. That was put down there to show that there was an oil formation there, just as is stated in the daily drilling report of that day, and nothing else —just to show what I found in the daily drilling report.

I know that there was oil between 3342 and 3465 from the daily drilling reports. They show oil in one report—the washing report. There are two places there and I am certain that I have correctly interpreted that report of March 10, 1911. I am referring to the washing report and I am quite positive that indicates an oil formation all the way down from 3342 to 3485; that is, from the washing report, and I base that upon my experience in the oil fields.

[3069]

Sometimes the mud they put down a rotary cases upon the sides and they have to wash it out lots of times before they can get the oil to come up, or the gas; it stops it off; it is for the purpose of testing out the well as to whether it contains either oil or gas; that is, at some times. Sometimes they know that it contains it; and when they know that it contains it, why, sometimes it won't come out unless it

is washed; the oil won't come out of the oil formation until they have washed it; and it is done for the purpose of allowing the oil to come up; the oil may not come out right at the start; it may take a considerable pumping before you can pump oil; it may contain oil, as oil blow-out; I do not remember whether there was pumping done there or not; I did not examine the production reports of that well altogether. I know the formation that is represented as sand on the bottom of this well on Section 26 is oil sand from the daily drilling report. I have not examined the production reports enough to say whether the showing of oil increased after they reached this formation at the bottom of the well which is marked as oil sand; at a depth of 199 to 222 feet, my log shows gumbo with boulders, also boulders and sand; the daily drilling reports show gumbo with boulders, also boulders and hard sand; I left out the word "hard" in my log, and it does not show what is in the drilling report; in the space from 278 feet to 291 feet, my log says rock and gumbo, with boulders, and the daily drilling report says rocks and gumbo with boulders; the drilling reports say "rocks", and my log says "rock"; that may be a typographical error. Assuming that it is correct, I don't know that it would mean anything to me unless they wanted to bring the impression that there were smaller rocks there as well as larger boulders; that is, assuming that this is correct. I think that the distinction between rock and rocks is important, the distinction is important; in refer-

ring to the depth on my log between 590 and 604 feet of this same well, the formation shown is rock. The drilling reports on [3070] page 7267 of the transcript state "rocks." I don't think that it means boulders. I think it means rock and hard substances that they are passing through, and as to the discrepancy between the daily drilling report and my log being at all important in that respect, I will say that "rocks" is different from the word "rock." If it means "rocks" in the sense of boulders, it is quite a discrepancy. The depth of 1215 to 1296 on my log shows blue shale and boulders. The daily drilling reports, page 7284 of the transcript, state, from 1215 to 1244 feet, shale and boulders; 1244 to 1296, shale and boulders. I don't know where I got the blue shale in my log; that is an error. It does not give exactly what is in the daily drilling reports as I intended to. In my log of that well I gave 2802 to 2803 as gumbo. It should have been 2802 to 2813, gumbo. That is an error of ten feet. The error is in the number, but in sealing it it would be the right size. My log at 3140 feet shows oil.

Q. Do you find that in the drilling reports?

[3071]

A. I must have found that some place. I don't see it here.

Q. Isn't this the fact, that after they had drilled that well to a considerable distance beyond 3140, that on March 19th, 1911, they began perforating, agitating, swabbing, and placing the well on air, and that the showing of oil at 3140 took place long after

all these things had been done and the well had been drilled away below? You will find that, I think, if you will refer to page 7632—that is, the showing of oil. Look under the date of May 10th, Mr. Kingsbury, 1911.

A. 3140 shows oil; yes sir.

Q. That was on the date of May 10, 1911, was it not?

A. Yes sir.

Q. Is it not a fact that this well had been drilled down to a depth of 3548 feet on March 5th, 1911? Look at page 7340.

A. March 5th, 1911, it was 3548 feet.

Q. And two months before the showing of oil was made they had reached a depth of 400 feet below the point where the showing of oil occurred? Is that right?

A. Yes sir; that is right.

Q. How far was the casing down on March 5th, 1911?

A. 3168 feet.

Q. How do you account for the showing of oil at 3140, then?

Mr. Mills—I don't know that the witness is called upon to account for it, inasmuch as he has testified that he took his log from the data, from the record itself. [3072]

Q. By Mr. Lewers—As matter of interpreting the record.

A. I don't know, unless they pulled the casing back.

Q. Well, did you inquire? I mean, did you examine the record to ascertain whether they did or did not?

A. No; I can't say that I did.

Q. Didn't you regard that as important in the preparation of your log?

A. In this case it would be important.

Q. Does your log show any perforations?

A. My log does not show any casing, either, nor perforations.

Q. Neither casing nor perforations. Will you examine the Associated oil log for this same well that you have before you and state whether it shows any perforations?

Mr. Mills—That is objected to as entirely irrelevant—whether it shows perforations or not. These logs are introduced to show the discrepancies between the facts and the logs introduced by the Associated Oil Company.

A. Yes sir. In a side note.

Q. By Mr. Lewers—What does the Associated Oil Company's log of that well show?

A. It shows that the well was perforated—or the casing was perforated; that is, the 3-inch line was perforated from 4000 feet to 3498 feet.

Q. Is that the only perforation?

A. Then, later, the 4½-inch casing was perforated from 3475 to 3330 feet.

Q. When was that done?

A. August 23rd. [3073]

Q. What year?

A. It does not give the year after the date.

Q. Well, will you turn to page 7347 of the drilling reports and state what appears there, if anything, concerning perforations, giving the date?

A. The date of March 19, 1911; perforated with twelve 7-16-inch holes per foot from bottom up to 3303 feet.

Q. You say that was on the date of March 19th, 1911?

A. Yes sir.

Q. Will you turn to page 7349 of the transcript, showing drilling reports, and state what was done at that time in connection with this well, and referring also to page 7350? It begins at the bottom of the first page.

A. Here on March 25th, 1911, "Well pumped intermittently. Some water. Also flowed; produced approximately 75 barrels of oil."

Q. Yes. Then what was done immediately following that?

A. They placed the well on air.

Q. What is the purpose of placing a well on air?

A. Sometimes use compressed air to get the oil out.

Q. To make it produce, is it not?

A. Yes sir.

Q. That was on what date, did you say.

A. March 26th, 1911.

Q. Knowing those facts, would you conclude that the showing of oil reported two months later, on May 10th, 1911, at 3140, came from 3140, or could it

have come from lower down, the well having been perforated at that time and also [3074] having been put on air?

A. I don't know just how much showing of oil there was there, or the character. I could not make any judgment on that.

Q. Would you regard that, under the circumstances, as a safe indication that there was oil at 3140—in the formation at 3140, I mean?

Mr. Mills—That is objected to Mr. Lewers, on the ground that it goes to a question not opened on direct examination, and as irrelevant and immaterial; calls for the conclusion of the witness, who does not pretend to have been there at all. He simply constructed the logs from the daily drilling reports.

A. Well, I could not decide that question. I don't know the conditions there—just how they located that oil.

Q. By Mr. Lewers—Refer, on your log for the well on Section 26, to the depth of 3265 to 3268, and read what your log shows?

A. Gumbo there.

Q. At 3265?

A. 3263 to 3268.

Q. What is that?

A. Oh, over here on the other side, 3265 to 3266, hard shale.

Q. Is that sixty-six or sixty-eight? It is blurred, and I could not make it out.

A. 3266.

Q. Then I will modify the question. Your log shows, from 3265 to 3266, what? [3075]

A. Hard shale.

Q. Will you look at the drilling report appearing at page 7336 of the record and state what it shows?

A. 3263 to 3266, blue shale.

Q. Then your log is incorrect, is it?

A. So far as—Yes sir; as to that.

Q. By Mr. Mills—"So far as" what?

A. As far as showing the kind or character of the shale between 3263 and 3266.

Q. By Mr. Lewers—That showing on your log was added after you had prepared the log in the first place, was it not?

A. Yes sir; that was.

Q. And it is a discrepancy, is it not?

A. It is a discrepancy; yes sir, as to these three feet from 3263 to 3266, as to the character of the shale.

Q. Do you regard that discrepancy as at all important?

A. Why, as it does not show what occurred in the drilling reports, that is. what was put down in the drilling reports.

Q. Do you regard the discrepancy between your log of the well in Section 26 and the Associated log for the same well, in regard to the perforations, as at all important? Is it what you would term "a startling discrepancy," if it had been the other way?

A. I didn't intend to put in the perforations.

Q. Well, do you regard the omission of those perforations as a discrepancy, to one who desires the history of that well for geological deductions?

[3076]

Mr. Mills: The log was not put in for any such purpose, Mr. Lewers. It was put in to show suppression of facts in different exhibits.

Mr. Lewers: I think it is showing that very distinctly. I am glad you admit that as your purpose.

Mr. Mills: Yes; that is the purpose—to show that they suppressed certain important facts in the logs introduced.

A. If this log were the only thing that I had, why, it would be a discrepancy; but as this log is practically correct—

Q. By Mr. Mills: Which log?

A. The log of the defendants is practically correct along that line, I didn't think it was necessary.

Q. Along what line?

A. In putting in the perforations.

My log does not show that after they drilled to a depth of 3548 feet, on March 5, 1911, that later the well was re-drilled from a depth of 2800 feet down to its ultimate depth of 4030; I used the first drilling reports down that far, to 3548; I made a comparison to some extent between the two drillings as shown by the daily drilling reports in the space between 2800 feet and 3548 feet that was passed over twice, to see whether the drillers reported the formation the same in both cases; they did not report the same, meaning to me that a rotary drill is not very accur-

ate in getting the formations passed through; when I am asked if those discrepancies or differences might not be due to the fact that different drillers were on when they reached the same place the second time, my answer is: "Well, there are two things to take into consideration—the different drillers, and the method of drilling." I find that as to shale and gumbo they use different interpretations; I have never seen a log that reported a formation of pulvero; I do not know what it is; I have seen "hardpan," which I generally considered hard clay; there is no universal rule governing the expressions [3077] used by drillers, but boulders I think would be termed the same in the same locality; I do not know how the driller detects the symptoms of a boulder when he stands with his hand ready to avoid any trouble, and it hits a boulder; they tell me that they know when they strike a boulder, but I just don't remember what they did tell me about that; I know with a standard they are apt to cause the hole to become crooked; as to the rotary, I don't know. I have heard of a rotary drill "chattering." That expression means rebounding and jumping. It seems to me that a boulder would cause that. Any substance that will not grind up smoothly might cause that jumping. I couldn't tell you if that same effect is produced upon a rotary drill by the same striking hard shell at an angle where one side of the drill touched it and the other didn't. I do not know that a rotary driller ordinarily, whenever the drill strikes anything that causes it to rebound, jump, or

chatter, labels that "boulders." I cannot say to the contrary. Here at the top of the well in Section 26, 30-23, where they would not be apt to have either shells or anything like that, they have marked it "boulders."

At a depth of 3609 to 3664 feet, my log shows "Soft blue shale; hard blue shale; soft blue shale; having a trace of oil." My log shows a trace of oil in all these formations, the drilling reports show "Soft blue shale," and at the bottom it says "All the soft blue shale formations show trace of oil." My log is not correct where it shows a trace of oil in other formations except the soft blue shale; I wish to correct this; where I stated that all the soft blue shale formations show a trace of oil; that is down as far as 3657; below that, to 3686 all the formations show oil. Between 3609 and 3664 there is fifteen feet of soft blue shale showing oil and seven feet of hard blue shale showing oil. The hard shale is between 3657 and 3664 and the rest of it does not show oil from the drilling reports, and my log is therefore incorrect in that respect. I would call that a startling discrepancy, but not intentional; that is, with respect to what I find in these drilling reports. In some respects I took these telegrams to form the basis of my information. I examined some of the telegrams to see whether they show these things. All my answers as to incorrectness are based on the daily drilling reports alone. I don't know whether I found anything in the telegrams altering that situation. I have not had a chance to examine

the telegrams since. My log of the well in Section 26, from 3860 to 3918, shows oil sand, good light oil. When they reached 3860 the casing was down 3572. I do not think the apparent showing of oil could have come from higher up. They had oil sand there; good light oil. They were drilling with a rotary drill and the hole would naturally be pretty well mudded. They keep them mudded up pretty tight and I do not think the oil could come down. I made a mistake in putting traces of oil opposite the gumbo, hard shale, between 3609 and 3657; that was inadvertent on my part. It shows traces of oil at different points and my log is inaccurate in that respect, it does not show the true conditions as reported in the daily drilling reports from which I made my log; it shows oil where it should not be; there is oil through that distance at different localities as shown by the daily drilling reports and the log of the defendants does not show any oil through that distance. Maybe they had inside information to make up this log; I don't know. According to the daily drilling reports, my log shows too much oil formation while the log introduced by the defendants does not show any oil formation in this locality between 3596 and 3664, and to some extent both are not to be depended upon as correct, although there is oil scattered through there—an oil formation scattered through there. I did not have a desire in every instance to magnify the oil showing; in one instance, between 3342 to 3465 feet, showing a trace of oil, I should have shown

3342 to 3485 feet; I there made a reduction of 20 feet, but this was entirely inadvertent.

It was on June 10, 1911 that I went to the well on section 30, [3079] 30-24 and observed the flow of oil, which I estimated at 2000 barrels; I did not take any measurements, but estimated from looking at it; I have had no experience in estimating the flow of oil; I have estimated the flow of water; I have estimated the flow of oils all along, and then would ask the men around; I endeavored to give a careful estimate of this well; Mr. Maxwell told me it was about 5000 barrels; he may have been there before; on this occasion we had been there but a very short time, and I assumed that the flow that I observed would continue for 24 hours; I think he overestimated it; he seemed elated and let that get the better of his judgment; he knew the position I held, and I think he took me over there to observe the conditions, so that if they should make an application for patent I would know the facts; he made no effort to minimize the amount or volume of oil.

As stated in my direct examination, I consider boulders an indication of shore conditions; they are generally hard, because they are water-worn, and by the process of elimination, the softer materials disintegrate, and the boulders are found in sand and gravel, although they might be found in finer material; where we have the boulders and sand laid down and then the sand washes away, later we have quiet waters coming on until you get [3080] the finer materials deposited around the boulders, and they may

rest on clay; they would rest upon shale and such materials, as it would have been hardened; if they fell into mud or clay, it would necessarily have to harden; I can think of conditions where boulders would be deposited by currents, then we get the quiet waters, and get the silt, and the boulders might be found resting in sand or gravel; you will notice that they find in one place at this well, boulders and sand; you even find boulders in rock, where the materials have hardened around them, after the deposit. It will take a long time after silt and clay are laid down by sedimentary deposit, before it hardens sufficiently so that the currents will not carry it away, and it would before the boulders arrived, a great deal of fine sand and coarse gravel; I would expect to find the boulders at the shore-line; the shore line would necessarily be flat, and it would take a very heavy current to transport boulders any distance.

I cannot cite any instance in the literature of geology where boulders have been actually found to have existed deposited in rock formation or hard shale. I cannot say that I have seen boulders mixed with shale or clay; it might be possible for ice flows and such things as that to carry boulders and drop them some distance from the shore line into fine silts or clays. The nearest boulder that I have shown in my log of the well on section 26 is 40 feet from the surface, deposited in gravel and sand, and would indicate unmistakable shore-line conditions; it is considered a fresh water deposit. I have never made

any examination of the formations along the Mount Diablo Range to the east of the Elk Hills, or examined the outcrops over there where shore-line conditions are revealed; I have to the southwest, and found boulders there embedded in sand, but not in shale or rock. The log of the well on section 26 introduced in connection with the testimony of Mr. Luke shows boulders in the same places as [3081] shows on my log; the log from which I obtained my information was a graphic log, while this one to which you call my attention is a descriptive log; the graphic log shows the formations graphically, and a descriptive log just describes them; very often the graphic log combines the daily reports in order to show the officials of a company as entire formation. My logs were made to show the differences or discrepancies in the graphic logs of the defendants, especially with reference to oil and boulders. I didn't see the descriptive logs introduced; and these descriptive logs were not called to my attention by Mr. Mills, I think; if so I disregarded them; I was in the hospital about a month, and out of work for two months on account of sickness, and may have missed some instructions which were given me.

In the descriptive log of the defendants on well No. 3, Section 24 of 30-23, in the Elk Hills, are shown boulders at the same place shown in my log; and there is shown 750 barrels of oil which I did not notice on that log; I was not directed to examine the production charts shown during the testimony of Mr. White, that I recollect; I saw certain produc-

tion data on the graphic logs of the defendants, so I just put some on mine, to show that they did not have it complete, that there were some discrepancies; I find considerable discrepancies as to the production. I did not make mine complete; I picked out the highest one I could find of oil and called that representative; I did not make an accurate report, but a representative production. I didn't put in the gas. In looking over the data I find right after that that the well became clogged and we could not go by the production after that, so it would be a kind of a hard think to make an accurate estimate of the production.

As to the shore line, I have not attempted to chart that by the boulders in these wells; shore lines are variable; we find it maybe at the line which the shore was located at a certain time, in a geological epoch; it may have advanced to that point during [2082] that epoch for a number of miles; I think in its advance it would come pretty close to both sections 26 and 24, and through them; it may have been considerably higher in 26 than in 24; 26 is a little to the southwest of 24; if the shore-line conditions in section 26 come up to within 40 feet of the surface, I would not expect the same line of elevation on the shore-line continued, that would be revealed by an outcropping on the surface beyond section 26; that has been covered up; we have a deposit coming on top of that as it extends on farther to the west, as the shore-line advances, or retreats, rather, and the ocean advances;

Q. Then, you think the fold in the Elk Hills is more recent than the deposition of the last shore-line material that you have spoken of, do you?

A. Well, I don't know as to that, the material found right on the surface of 26.

Q. Well, you say you don't know. All right.

A. Now, I don't want it to be understood here that this [3083] graphic log from which you have drawn shows correct conditions.

Q. By Mr. Mills—"Log?" Is it a log?

A. Graphic chart, which is drawn here, shows correct conditions, for we don't know that this point at 1770 to 1600 is on the same strata as we find the gravel in 26—or, boulders in 26 at 40 feet to 360.

Q. By Mr. Lewers—It is the first indication of boulders in well on Section 24, is it not?

A. As found on 24.

Q. You think there might probably or possibly have been some above that?

A. There may have been. Certainly.

Q. Did you find anywhere in the Elk Hills, in all of your examinations, any outcrop of sands or boulders indicating shore-line conditions?

A. No. Those outcrops are—There are no outcrops. All that is covered.

Q. Even beyond the range?

A. Yes; beyond the range.

Q. They are still covered?

A. Yes.

Q. They come up to within 40 feet of the surface

on Section 26 but are not revealed in any of the ravines in the Elk Hills? Is that correct?

A. Well, now, that was—The material on Section 26 is fresh water deposit; was probably deposited when the land was above water there.

(Chart offered in evidence and marked “Defendants’ Exhibit 201.) [3084]

I think the manifestation of a boulder would be more distinct with a standard rig, as we have loose tools, and in a Rotary they are pretty tight and rigid; a real boulder might be likely to cause trouble in either case; in either case, if the drill hit the boulder squarely, it would slow up; if it were hit on the side, and was small, it would probably be pushed aside, but if large, it would deflect the tools; it is very probable that a driller would know if a Standard drill went through it, if it were embedded in rock; the bailer would bring it up; if a Rotary drill struck it, it would grind it up, and it would come up as mush or mud; that is why I think a Standard would be more likely to reveal the presence of the boulder.

Q. Do you know with what sort of a rig the well in Section 24 was drilled?

A. I will look that up. Drilled with a—

Mr. Mills: Now, I object, again, to this line of cross-examination, as not proper, nor based on any questions or matters elicited on direct examination; and I advise the witness not to answer the question. It seems to me that counsel is trying to kill time

because we are getting to the close of this rebuttal testimony.

Mr. Lewers: Your suggestion, Mr. Mills, is entirely without foundation. This is proper cross-examination, and I consider the objection made because Mr. Mills knows very well that it is going to get at points that will cast entire discredit upon the testimony and conclusions of this witness.

Mr. Mills: I submit that you have now spent a day and a half in cross-examining this witness, and out of the entire time you have not spent half an hour on any matters that were elicited on direct examination.

Mr. Lewers: I want an answer to my question.

Mr. Mills: Well, I advise the witness not to answer it. [3085]

Q. By Mr. Lewers—Are you going to follow that advice, Mr. Kingsbury?

A. I will follow the advice of my attorney.

Q. Very well, then. I want a further foundation, however. Mr. Kingsbury, do you claim any privilege on the ground that the answer would tend to incriminate you?

Mr. Mills—You need not answer that question. If the court is going to compel you to answer, of course you will answer it.

Q. By Mr. Lewers—Do you refuse to answer?

Mr. Mills—We have sat here twelve hours, now, listening to a lot of irrelevant and immaterial questions, and I have objected to very few of them in hopes that you would finally get through.

A. With all due respect to the court, I will act upon the advice of my attorney until otherwise instructed.

Q. By Mr. Lewers—Would the answer to this question be revealing anything that you have received as a privileged communication in any respect?

A. That is along the same line as the questions which I have refused to answer.

Q. And you refuse to answer that, do you?

A. I think, upon the advice of my attorney, and with all due respect to the court, until I am—or, until the court makes a decision upon that point.

Q. I now ask you to examine page 7489 of the transcript in this case. Will you turn to it? (Witness examines transcript). Will you read what appears under "Remarks," on the rotary, for the 11th day of December, 1910, the [3086] drilling report as it appears on that page 7489?

A. That question is along the same line as—

Mr. Mills—Answer the question, and get through. Let's see whether we can get somewhere.

A. (Continuing) "Installing Rotary."

Q. By Mr. Lewers—Well, is that all that appears under those remarks? Read it all.

A. "Dismantling Standard rig; installing Rotary."

Q. Would you conclude from that that the drilling down to that point had been done by a Standard drill?

Mr. Mills—I object to that, as clearly calling for a conclusion of the witness on the testimony. The

testimony will show. The court will draw its own inference.

Mr. Lewers—You may answer.

A. As Mr. Mills has already said, the testimony introduced by the defendants will show.

Q. I am asking you for your conclusion. Will you kindly answer, without evasion?

A. I don't know as I am called upon to make any conclusions along this testimony.

Q. What depth was indicated by the report for that same day, as appearing on that same page?

A. The depth stated is 1555 feet.

Q. Will you examine your log for that same well and state where the first showing of boulders occurs—at what depth?

Mr. Mills—Which well is it?

Mr. Lewers—Twenty-four. [3087]

A. Twenty-four. The depth was 1570 feet.

Q. After they had changed to a rotary, was it not?

Mr. Mills—Well, I don't know that the witness knows anything about that, except what the testimony shows, Mr. Lewers. He does not claim to have been there at that time?

Mr. Lewers—You may answer.

A. That would be calling for a conclusion upon the testimony already given.

Q. You have not hesitated to draw many conclusions, on direct examination. Will you draw another one here? That was after the Rotary was installed, was it not?

Mr. Mills—How does he know, unless he was there, Mr. Lewers?

Mr. Lewers—You may answer.

A. I was not there to see.

Q. You are very ready to take the suggestions of counsel, I see?

A. Yes.

Q. That shows very good team-work. I shall not interfere with that. Now, will you turn to page 7312 of the record and state what is there said as to the kind of rig that was being used in drilling the well in Section 26?

A. On the 28th day of December, 1910, they were not using any tools.

Q. Well, what is said under "Remarks" for that date?

A. "Rigging up for Standard tools."

Q. At what depth was that, as it appears from that report?

A. The testimony shows that. The testimony of the other— [3088]

Q. Will you kindly answer my question? What depth was that?

Mr. Mills—He wants to know what is on the— what appears there.

A. The depths given here, "Depth last reported, 3174. Hole made, 1 foot. Present depth, 3175."

Q. By Mr. Lewers—Will you turn back over the pages before that showing the reports for drilling and state what sort of a rig is reported, say back for ten or fifteen pages?

A. Well, as for December 26th, 1910 page 7311, "Rotary rig."

Q. Turn back to page 7264, and read what is said under the report for July 7th, 1910, when they were down to a depth of 320 feet. What kind of a rig were they using

A. July 7th, 1910, "Remarks:—Rotary." I notice above that, they have "gumbo and boulders."

Q. They were drilling with a rotary then, were they not?

A. I don't know. It don't state so.

Q. Well, do you find any indication of a change from a Rotary to a Standard or from a Standard to a Rotary after they started the well?

A. They don't state what they started the well with.

Q. By Mr. Mills—What depth was that gumbo and boulders?

A. 316 to 319.

Q. By Mr. Lewers—Well, do you conclude from the fact that it does not appear what they started with that they started with a Standard?

A. They may have spudded in with a Standard.
[3089]

Mr. Mills—What well is this, Mr. Lewers?

Mr. Lewers—Twenty-six.

Q. Do you find any notation in those notes, daily reports, of rigging up or changing from a Standard to a Rotary?

A. It may have been rigged for both, to start with.

Q. Oh, I see. Why was it, then, that when they got down to 3175 they found it necessary to dismantle it and to rig it for a Standard?

A. I was not there.

Mr. Mills—That calls for a conclusion that the witness cannot possibly answer; and I therefore object to it.

A. I was not there. I don't know.

Mr. Mills—Just a minute.

Q. By Mr. Lewers—You say you were not there.

A. No.

Q. Well, you were not there in the first place, either, were you?

A. No.

Q. When they started the well?

A. No.

Q. Yet you were willing to volunteer a suggestion that it might have been rigged for both Standard and Rotary at the same time?

A. Yes sir.

Q. But when I call your attention to the report that they dismantled the Rotary and rigged up for a Standard, you are unable to make any suggestion. Is that because it shows the inaccuracy of your first suggestion? [3090]

A. Now, let's have that first question. (Record read by Special Examiner.) Now, I can't tell you why they did.

Q. Do you know whether or not they drilled with a Rotary again after they had reached 3175? Refer to page 7329 of the record.

Mr. Mills—I can't understand how you expect to prove by this witness, who manifestly does not know the facts, as to what happened at the well when he was not there.

Mr. Lewers—It is barely possible that I am anxious to show that he does not know anything about the facts.

Mr. Mills—Well, it is admitted that he was not there, excepting one or two times, when they were drilling.

Q. By Mr. Lewers—Have you found the page?

A. Yes sir. 7329.

Q. What were they drilling with at that point, according to the notes?

Mr. Mills—I object to that, unless the witness knows the fact, and he has already stated he does not know.

Q. By Mr. Lewers—You may read what it says

A. They were not drilling with anything.

Q. Well, what kind of a rig were they using?

Mr. Mills—If you know what kind of a rig they were using, answer the question without hesitation. If you don't know, say so.

A. Well, I don't know what kind of a rig they were using at that time.

Q. By Mr. Lewers—Will you read what appears under "Remarks", at the bottom of page 7329, under the date of February 10th, 1911, at a depth of 3175 feet? [3091]

A. "Rigging up Rotary."

Q. Will you read, on page 7334, under the head of "Remarks", under the date of February 21st, 1911, what is stated about the kind of drill?

A. "Rotary rig, from depth of 3177, working with 2-1/2 inch drill pipe."

Q. Will you refer to page 7340, and read what is said under "Remarks", for the report of March 4th, 1911, as to the character of the rig?

A. "Rotary rig."

Q. What depth were they at that time, according to the report?

A. According to the report, they were between 3527 and 3548.

Q. Now, referring to the well on Section 30, do you know what sort of a rig was used on that well?

A. Not from my personal knowledge.

Q. What kind of a rig was in operation while you were there?

Mr. Mills—Pardon me, before you answer that question. Is it your contention that the well on 24 was entirely drilled with a Rotary?

Mr. Lewers—No. My contention is that the well on 24 was drilled with Standard tools to 1555, and then with a Rotary the rest of the way.

Mr. Mills—On page 7312 it shows they were rigging up for Standard tools. 3175 feet.

Mr. Lewers—3175.

Mr. Mills—Yes. [3092]

Mr. Lewers: That is Section 26. It appears on Section 26 they drilled with a Rotary to 3175, temporarily installed Standard tools, and then went

back to Rotary and finished with the Rotary down to the bottom. So that Section 26 was entirely drilled, so far as any progress was concerned, with a Rotary.

Mr. Mills: That is, you claim that the evidence shows that?

Mr. Lewers—Yes. No question about that.

Mr. Mills: What is the use of going over this with this witness, if that is your contention. Let the evidence show it.

Mr. Lewers: I want to get these together.

Mr. Mills: You can't make your evidence any stronger to have a witness for the government testify that the evidence shows a certain thing.

Q. By Mr. Lewers: Now, is it not a fact that the well in Section 30 was drilled with a Standard to 1323, and a Rotary the rest of the way? Refer to page 7175.

A. From the evidence introduced by the defendants, it shows this fact.

From these I do not think that the fact that they drilled with a Standard in Section 24 down to 1555 feet had anything to do with the absence of a showing of boulders in the logs, nor do I think the fact that they drilled with a Rotary beyond that had anything to do with a showing of boulders, and my same answer applies to the well drilled entirely with a Rotary on section 26.

The word "boulders" means but one thing; I don't know whether a driller using a Rotary would denominate the chattering of the drill as an indica-

tion of a boulder; I have not had sufficient experience to state that there is any difference in the movement of a rotary drill in striking a real boulder and in striking any other substance or formation that would cause it to chatter and jump. I have not had an opportunity to see a Rotary drill strike a boulder; I notice in the papers handed me, the well logs, of well [3093] 6, Section 20, 32-24, that it was drilled with a Rotary, and that they have struck a number of boulders in this well, with sand and boulders, clay and boulders, coarse sand and boulders; the other log, which purports to have been drilled with a Standard, shows nothing referring to boulders, although we have what is reported as granite sand, which may have been boulders ground up .

Said last-mentioned logs introduced in evidence, and marked Defendants' Exhibits 202 and 203—LL.

REDIRECT EXAMINATION OF J. W. KINGSBURY

At the time I was on the trips with W. O. Maxwell, of the Associated, and L. J. King, superintendent of that company, to the well on Section 26, 30-23, and 30 of 30-24, it was June 10, 1911, before I ever heard of this suit; Mr. Maxwell was highly elated over the discovery of oil in the well on Section 30, as I stated before; so far as I know he did not know anything about the suit.

If a boulder were struck with a Standard drill some evidence of the boulder might be drawn up in the bailer in small fragments, which would be addi-

tional evidence of the boulder; in my opinion a Rotary driller knows when he strikes a boulder of any size, but I am not so familiar with the Rotaries, and could not answer exactly as to them; from my study of reports, striking the boulder at an angle sometimes breaks the bit, and sometimes deflects it; it does not follow because a drill strikes a boulder at one place that it must necessarily strike a boulder in the same strata a mile and a half away; it frequently happens that a well in one case will strike strata containing boulders and perhaps have trouble, while a well a short distance away going through the same strata may pass safely through and not encounter them.

The principal discrepancies between the daily drilling reports introduced by the plaintiff and the graphic logs known as Defendants' Exhibits 175, 176 and 177, is an omission of the boulders in the graphic logs, and the many missings of the production of [3094] oil, and leaving out places where gas was obtained; I consider it a startling discrepancy when drilling reports and telegrams sent from the field by the Associated Oil Company's employees show a production of from 750 to 900 barrels per day that the graphic logs which are alleged to have been made up from that very data show only 90 barrels a day; assuming that the drilling reports and telegrams are correct, and from that data I find a production of 750 barrels a day in one well, and the drill stem broke off, and while they were fishing for it for two or three weeks the well made 100 barrels a day, I think

750 barrels a day as I have on my log is representative in a conservative way of the capacity of that well.

RECROSS EXAMINATION OF J. W. KINGSBURY

If a well is producing 750 barrels a day, I think a hundred barrels a day is a conservative estimate of production when the well is clogged with sand and drilling tools and such things. This well was clogged with sand last February, and I base my conclusions upon the assumption that it was clogged with sand and drilling tools. I regard my logs as calculated to convey a correct impression of the facts.

REDIRECT EXAMINATION OF J. W. KINGSBURY

The inaccuracies pointed out by Mr. Lewers are of minor importance geologically and on the ground of production, but there are no inaccuracies in the amount of production of oil or in the occurrence of boulders.

RECROSS EXAMINATION OF J. W. KINGSBURY

When you ask me if I regard the insertion of 200 feet of oil sand as a minor discrepancy in my log, my answer is that I have not inserted any 200 feet of oil sand; I have approximated the location [3095] where oil sand might exist, as shown from the telegrams, and I used broken lines to show it was an approximation. The oil and sand does exist—I will

say that; but I have used that side note to show an approximation where it probably exists. As far as what my logs were made out for, I am satisfied with them, and I am satisfied with the production of oil as shown by my logs. As an accurate resume of what is indicated by the drilling reports, telegrams, and daily reports of the Associated Oil Company for those wells, it shows what they could produce if in good condition.[3096]

GEORGE W. STEWART, a witness called and sworn on behalf of the plaintiff, in rebuttal, testified as follows:

DIRECT EXAMINATION

By Mr. Mills:

Q. You are the Register of the local United States Land Office at Visalia?

A. Yes sir.

Q. And are you at the present time?

A. Yes sir.

Q. Who is the Register of that land office at the present time?

A. The Receiver?

Q. I mean who is the Receiver?

A. Arthur H. Swain.

Q. How long have you held the office of Register of the land office?

A. Very nearly sixteen years.

Q. Continuously?

A. Yes sir.

Q. Then, I take it that you were Register of that office during the years 1903 and '04?

A. Yes sir.

Q. Now, I show you this bunch of bound papers, which purports to be a list of lands selected by the Southern Pacific Railroad Company. Will you examine it, please, and state what it is and where it has been?

A. This is a list, numbered 89, received at our office November 14th, 1903, and has been in our office all the time until I brought it here to San Francisco.

Q. Yes. That is, it has been under your official custody and control as Register of that office?

A. Yes sir. [3097]

Q. Now, will you state whether that is a selection list of indemnity lands within the main land limits?

A. Indemnity limits.

Q. Indemnity limits?

A. Yes sir.

Q. And is that the original document which was filed by the railroad company as of the date November 14th, 1903?

A. It is one of five copies.

Q. All originals, are they?

A. It is their usual practice to file five copies, and we treat them all as original so long as they are in our possession.

Q. Now, what is the practice in the Department with reference to the treatment of the five copies

after they are received? What do you do with them?

A. After approval, three copies are returned to the railroad company, one copy is retained for the permanent files of our office, and one copy in due course is transmitted to the General Land Office.

Q. Yes. Now, is this the copy which you retained in your office?

A. Yes sir.

Q. What does it contain? What papers does it contain, naming them? What is the first paper? Isn't the first paper a certificate of the Secretary of the Southern Pacific Railroad Company certifying that Chas. W. Eberlein was appointed acting land agent of the applicant, Southen Pacific Railroad Company, at a meeting held on the 2nd day of September, 1903, and since that time has been continuously the acting land agent?

A. It is.

Q. What is the date of that?

A. November 7th, 1903.

Q. Now, what is the next paper you find? The next is a list [3098] of lands, is it not, signed by Chas. W. Eberlein, as acting land agent?

A. Well, it is the application accompanying the list.

Q. Yes. And the next five pages—

A. Are the list of selected lands and a list of lands assigned as bases therefor.

Q. Yes. Followed by what?

A. By an affidavit of Chas. W. Eberlein.

Q. Dated?

A. Dated November 7, 1903. The next is a certificate signed by the Register and Receiver of the local land office. The next is a statement of Chas. W. Eberlein, acting land agent, that the railroad company offers to pay for the survey of the lands under protest.

Q. And the next paper is what?

A. The affidavit of Chas. W. Eberlein that he is acting land agent of the Southern Pacific Company.

Q. That is not the last paper, is it?

A. No.

Q. Next to the last?

A. Next to the last.

Q. And will you read the—not read it, but give the substance of that affidavit.

Mr. Lewers: Do you expect to put the document in evidence itself?

Mr. Mills: Yes.

Mr. Lewers: Very well.

A. And that he has caused the lands selected in said list 89 to be carefully examined by the agents and employes of the company as to their character.

Q. By Mr. Mills: Yes; as to their mineral or agricultural character, eh? [3099]

A. As to their mineral or agricultural character; and that to the best of his knowledge and belief none of the lands returned in said list are mineral lands.

Q. When was that affidavit subscribed and sworn to?

A. Subscribed and sworn to November 7th, 1903.

Q. What is the last paper in this bunch?

A. That is a certificate from the Register of the Land Office at San Francisco regarding the base lands, with which we have nothing to do.

Q. What is the date of that certificate?

A. November 12th, 1903.

Mr. Mills: Now, with this identification, I offer this bunch of papers in evidence, as one exhibit, as the papers constituting the selection list No. 89 of lands selected by the Southern Pacific Railroad Company, indemnity limits, main line, filed November 14, 1903, as Plaintiff's Exhibit 12-M.

Mr. Lewers: I object to the introduction of the exhibit, on the ground that it is not rebuttal testimony, but, if admissible or relevant, is part of the case in chief.

Mr. Mills: This, you will remember, is part of the testimony which we both agreed we would put in at some time before we closed the case, you stating that you would put it in in your defense if I didn't put it in at some time; and, without conceding that it is not rebuttal, I offer it under those circumstances.

Mr. Lewers: Why, I have not at this moment the distinct recollection of what the agreement was, but whatever agreement we made in connection with it of course I don't intend to go back on but abide by. I have certain certified copies myself that I have obtained since we closed our case that I expect to offer.

Mr. Mills: I will ask the Special Examiner at this time to extend into the record Plaintiff's Exhibit 12-M, with the understanding, if it is agreeable to you, Mr. Lewers, that the original of [3100] any of these papers may be returned, upon the substitution of certified copies.

Mr. Lewers: That is perfectly agreeable to me.

Mr. Mills: All right.

The papers last referred to and offered in evidence are marked "Plaintiff's Exhibit 12-M-L.L.," and are as follows:

(Said exhibit appears in volume of Exhibits.)
[3101]

Q. Now, using that as a basis, as Plaintiff's Exhibit 12-M, for your testimony, and basing your answers on your recollection of what happened, will you give the history of that selection list?

Mr. Lewers: I object, on the ground that that is not rebuttal, and on the ground that the selection list and documents in connection therewith are the best evidence; that this is an attempt to vary by parol evidence the effect and purpose of documents received and filed in the office of the Visalia Land Office in the regular course of business and as a part of the official business of said office.

A. This selection list was rejected November 17th, 1903, by the Register and Receiver, on the ground that the lands applied for were embraced in territory suspended by the Commissioner of the General Land Office—suspended from disposition.

Q. By Mr. Mills: Was that under an order of suspension made in February, 1900?

A. February 28th, 1900, by wire, by telegraph.

Q. And was that order in full force and effect at the time this list was offered on November 14th, 1903?

A. It was.

Q. As to the lands involved?

A. It was. I could not state at this moment whether it was the lands or—Let's see. Wait a moment. I can tell you in a moment.

Q. Was not the whole township 30-23 embraced in the order of suspension? Is not that true?

A. That is true. It affected all the lands embraced in the list.

Q. Yes. That is, all the lands selected, you mean. Not the base lands?

A. The lands they attempted to select under this list.

Q. Do you know whether or not, after rejection on November [3102] 17th, 1903, by your office, the Southern Pacific Railroad Company filed an appeal from that rejection?

A. Yes; I believe an appeal was filed.

Q. Now, do you know, in general, whether the order of suspension during the pendency of that appeal, was revoked, as to these lands, among others?

A. It was.

Q. That was under an order, generally, of February 20th, 1904, wasn't it?

A. I believe that was the date; yes sir.

Q. And what date did you receive the order at your office?

A. I think it was February 26th, 1904.

Q. Did this list, which you say was retained in the office, at that time contain all of these papers that it now contains?

A. Yes sir; it has not been changed in any manner.

Q. Excepting as to the survey signed by yourself and Mr. Swain as Receiver? Is that true?

A. I refer to no papers having been taken from those accompanying the list and none added to it.

Q. Now, I call your attention to that portion of the list which constitutes the certificate of the Register and Receiver, which appears originally to have been dated "Visalia, November, 1903", and which has been cancelled with a pen in such way as to read now "February 26, 1904", and also to certain cancellations in red ink of the words "returned and denominated as mineral land or lands or—". Will you explain those, please?

A. When the list was received, this certificate had written in the words, "Visalia Novr."—

Q. And a blank space?

A. In a blank space.

Q. And what else?

A. And the figure "3", after the figures "190".

[3103]

Q. Yes; making "1903"?

A. Yes sir. And owing to the fact that the list

could not be accepted at that time, the date was not completed nor was the certificate signed.

Q. Yes.

A. And after the return—No; after the revocation of the suspension, and a letter from the Commissioner of the General Land Office stating that owing to such revocation the list could be acted upon by our office, the matter was taken up at the date on which the letter was received.

Q. What date was that?

A. February 25th, 1904.

Q. Yes.

A. And the certificate was given that date and a line drawn through “Novr” in the date line, and the words—

Q. Wait a minute. What insertion?

A. And we added to the date line, “Feb’y 26”, and the figure “4” after the figures “190”, making the date of acceptance by our office February 26, 1904.

Q. In whose handwriting were the words “Visalia Novr” and the figure “3” on the date line?

A. I have no idea.

Q. Was that on there when you received it?

A. Yes sir.

Q. In whose handwriting is the crossing out of the abbreviation for “November” and the words “February 26, 1904”?

A. In mine.

Q. Now, what have you to say about the red-ink cancellation of the words “returned and denomi-

nated mineral land or lands, or” in this sentence, “and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, or claimed as swamp lands”; Who did that? [3104]

A. I crossed that out with a red-ink pen, for the reason that the second plat of that township filed had a mineral return covering the lands which they applied to select, and I made that change to have the certificate agree with the fact. We then—

Q. Just a minute.

Mr. Lewers: He has not finished.

Q. By Mr. Mills: To make it clear—the plat filed by whom, the plat of survey I mean.

A. The plat of the official survey of the township, which we received from the United States Surveyor General.

Q. Proceed.

A. Showing his approval. All I was going to state was that the certificate was then signed by the Register and Receiver.

Q. Now, I call your attention to Plaintiff's Exhibit E, Mr. Stewart, and will ask you if this plat, or a duplicate of it was on file in your office, and is that the plat to which you referred when you say there was one filed by the Surveyor General?

A. It is.

Q. Now, at this point in the record will you read the certificate as to the character of the lands?

A. This mineral return?

Q. Yes; the lands which you referred to as in Township 30-23, as being covered by this selection.

A. "Mineral land, (in Midway Min'l District) S.E. $\frac{1}{4}$ and W $\frac{1}{2}$ of Sec. 14; all of Secs. 15 and 16; E $\frac{1}{2}$ and S.W. $\frac{1}{4}$ of Sec. 17; S.W. $\frac{1}{4}$ and E $\frac{1}{2}$ of Sec. 19; all of Secs. 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29; E. $\frac{1}{2}$ and N.W. $\frac{1}{4}$ of Sec. 30; N.W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of Sec. 32, and all of Secs. 33, 34, 35 and 36—surveyed by Duee, is regarded by him as to be more valuable for mineral than for agricultural purposes."

Q. Now, will you read the certificate of the Surveyor General, beginning here? [3105]

A. "The above map of Township No. 30 South, Range No. 23 East, Mount Diablo Meridian, California, is strictly conformable to the field notes of surveys thereof, on file in this office, which have been examined and approved. U. S. Surveyor General's Office, San Francisco, California, August 1st, 1902. W.S.Graham, U.S. Surveyor General for California."

Q. When, as a matter of fact, was that filed in your office?

A. May 16th, 1903.

Q. And on the copy which you have in your office does that appear by any notation, and, if so, what notation?

A. "U. S. Land Office, Visalia, Calif. Officially filed, after due notice, May 16, 1903. Geo. W. Stewart, Register."

Q. Now, what do the words, "after due notice", that you used in the last endorsement, mean?

A. When the official survey of a township or of part of a township is filed in our office, we given no-

tice to the public by having a copy posted in the office of the County Clerk of each county in our land district and in all of the post offices in the vicinity of the land, also in our own office, for a period of thirty days, such notice stating the date on which the plat will be officially filed.

Q. Now, referring to the endorsement on Plaintiff's Exhibit E, under the words "mineral lands", the part that occurs in parenthesis, "In Midway Min'l District", what does that mean?

A. Well, it can't refer to an organized mineral district, because there is only one in our land district, which is at White River, and it must necessarily mean a local term for a certain territory.

Q. What does "Min'l" mean?

A. I would take it to mean "Mineral."

Q. Now, how much of this land the descriptions of which you read, in comparison to the whole township, was there, in acreage, [3106] included in this survey? Was there more or less than half of the township?

A. More than half.

Q. Had all of the rest of the township been previously surveyed?

A. Yes sir.

Q. On what basis?

A. All except on estimated area of one hundred sixty acres in the north-east corner, designated as being in Tule Swamp on Buena Vista Slough.

Q. And what not?

A. The rest of it had been surveyed in 1893 and 1901. No.

Q. What about this here (showing.)

A. Crossed out about 1901.

Q. Are you correct in that?

A. No.

Q. What about this survey up here?

A. I hadn't noticed that. I would like to correct that statement. The northern portion of the township, with the exception of the estimated swamp land area noted, and the south-western part had been surveyed in 1856—by Brice M. Henry, in 1855, and approved in 1856.

Q. Now, the northern portion of the township was included within the boundary limits of the survey by Mr. Henry in 1855, was it not?

A. Yes sir.

Q. Generally speaking?

A. Yes sir.

Q. And also Section 31 and a part of Section 30?

A. Yes sir.

Q. Now, at the time that you canceled out the words referred to, "Returned and denominated as mineral land or lands, or" on[3107] February 26, 1904, will you explain why you did that?

A. Simply to make the certificate agree with the facts.

Q. What facts?

A. That the official plat showed a mineral return covering that—the lands sought to be selected.

Q. Then it was due to the presence in your of-

fice, as an official file, of the official plat of survey approved August 1, 1902, and filed in your office on May 16, 1903, a duplicate of which constitutes the Plaintiff's Exhibit E, that you canceled that portion of the certificate in order to have the certificate comply with the facts?

A. It was.

Q. Did you have in mind at that time, Mr. Stewart, the plat of survey to which you have just referred, returning these lands as mineral lands, and all of them?

A. Well, when an application to select or enter is filed, we must necessarily examine our tract book to ascertain if the land applied for is vacant and examine the plat book to ascertain its acreage and whatever facts may be shown by the plat book; and by this reference we discovered that that land was covered by a mineral return.

Q. Well, then you had in mind, did you not, the fact that the land had been returned as mineral, when you canceled those words out of the certificate?

A. We did. I did.

Q. Now, you say there were five copies. Did you do that on all of the copies of that date?

A. That is my recollection. My practice was to treat those all as original copies.

Q. Who makes up those forms of the certificates, affidavits and list of lands which constitute what we have termed the selection list of the railroad company of which selection list 89 is [3108] a type?

A. I don't know. This is list 89—

Q. What I mean is, are they prepared by your office—those forms?

A. No part of the papers are prepared by our office.

Q. State whether or not they are printed forms.

A. They are printed forms, all except the certificate of the Register of the United States Land Office at San Francisco regarding the base lands.

Q. Then, is all of the wording of the certificate as it appears here in printed form, excepting where blank lines have been left for dates or the endorsement of the amount of fees and the signatures of the Register and Receiver, in print?

A. Yes sir.

Mr. Lewers: It is not your contention, is it, that those forms are originally printed and prepared by the officers of the railroad company and not by the government?

Mr. Mills: No, my contention is that the printed form was made up by the railroad company to comply with the railroad's idea of the requirements of the Land Office.

Mr. Lewers: You don't deny, do you, that those forms were prescribed by the Land Office years ago?

Mr. Mills: Well, I don't deny or affirm anything. I am simply eliciting the fact as to where they are prepared.

Q. So far as you know, these were first produced by the railroad company in your office—these printed forms?

A. Well, they were received from the railroad company with the list.

Q. Does the name "Charles W. Eberlein" appear in print in the different affidavits and certificates, excepting where he is required to sign?

A. Where his name appears in the body of the affidavit or [3109] certificate, it appears in print.

Q. Now, as I understand your testimony, after the selection list 89, which was received on November 14, 1903, had been rejected by you, did you hold this selection list, Plaintiff's Exhibit 12-M, in your office?

A. Yes sir.

Q. And you state that you had crossed out, by red ink cancelation, those words that I have referred to?

A. That is my recollection. I am satisfied I did.

Q. What became of the other four?

A. One was forwarded to the General Land Office and three were returned to Mr. Eberlein, which was our usual practice.

Q. After you received the notice of the revocation of the suspension from the General Land Office, on February 26, 1904, what did you then do with Plaintiff's Exhibit 12-M?

A. We didn't receive the notice on that date. We had received the notice prior to that date, but the Commissioner's letter of that date—

Q. Now, aren't you mistaken about that? Wasn't that letter dated February 20th, and didn't you receive it on the 26th?

A. Yes; but that was not our first notice of the revocation.

Q. I am speaking now of the notice which you received on February 26th.

A. Yes; but as your question is framed—

Mr. Mills: Read the question, please.

(Question beginning line 12, this page, was read by the Special Examiner.)

A. (Continuing.) Well, that was not our first notice of the revocation.

Q. Well, I say, after you received the notice of February 20th, what did you do?

A. Well, after we received the notice of February 20th, we [3110] accepted the selection.

Q. In the form in which it now appears, with the words canceled, "Returned and denominated as mineral land"?

A. Yes sir.

Q. I show you this paper, Mr. Stewart, and ask you what it is.

A. This is a letter, signed—

Q. A letter or copy of a letter?

A. A copy of a letter, the original of which was sent to the Commissioner of the General Land Office, and a press copy of which is now in our office, signed by me and—

Q. As what?

A. As Register of the United States Land Office at Visalia, and transmitting to the General Land Office the said List 89 with the papers filed in the case.

Q. What is the date of this letter?

A. December 11, 1903.

Q. Is that a correct copy of the letter which was sent by you to the Commissioner?

A. That is a correct copy that has been compared with the press copy in our office.

Q. And where is it found in your office—the press copy?

A. The Commissioner's Letter Book, Volume 40, page 57.

Mr. Mills: I will offer this in evidence as Plaintiff's Exhibit 12-M, and will read it into the record.

Mr. Lewers: We make the same objection—that it is not rebuttal.

(The letter last referred to and offered in evidence is marked Plaintiff's Exhibit 12-N and is read into the record as follows:)

Q. By Mr. Mills: I show you this letter, Mr. Stewart, and ask you what it is, just generally.

A. This is a letter from the then Commissioner of the General [3111] Land Office, W. A. Richards, to the Register and Receiver of United States Land Office at Visalia.

Q. Dated when?

A. Dated February 20, 1904, referring to rejection by our office of said List 89, affirming our action in doing so, and calling attention to the revocation of the order of suspension made since the date of our rejection of the list.

Q. Is this the original letter which your office re-

ceived officially from the Commissioner of the General Land Office?

A. It is.

Q. Are you acquainted with the signature of W.

A. Richards, the Land Commissioner at that time?

A. I am.

Q. And have you received, in response to correspondence with that office—

Mr. Lewers: I will admit that is Mr. Richard's signature.

Mr. Mills: All right.

Q. What are these endorsements on the back of the letter? Don't read them, but what are they, generally?

A. At that time it was our custom to note on the back of the letter the letter designation of the division in which it originated, the date on which written, the date of receipt at our office, and the substance in brief, the action taken.

Mr. Mills: We offer this letter, together with the endorsement, as Plaintiff's Exhibit No. 12-O, and will ask the Special Examiner to extend it into the record.

The letter last referred to and offered in evidence is marked Plaintiff's Exhibit 12-O-L.L. and is read into the record.

Q. I call your attention to this letter, Mr. Stewart. What is this?

A. This is a letter from myself, as Register of the United States Land Office at Visalia, to Charles W. Eberlein, Acting Land [3112] Agent of the Southern Pacific Railroad Company.

Q. Dated?

A. Dated March 5, 1904, and—

Q. Is this a copy of a letter?

A. And noticing the acceptance of list No. 89. This is a copy of a letter taken from the press copy book in our office.

Q. And where is that press copy to be found?

A. Registered letter book No. 7, page 105.

Mr. Mills: You will agree that this is a copy, won't you, Mr. Lewers? Do you know anything about it?

Mr. Lewers: I don't know.

Mr. Mills: We offer this in evidence, with that statement, and will ask the Special Examiner to extend it into the record.

The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-P L.L." and is read into the record.

Q. Now, referring to Plaintiff's Exhibit 12-M, which is the selection list, first rejected, and afterwards, the lands having been relieved from suspension, accepted February 26, 1904, did any patent issue on that selection at that time?

A. No sir.

Mr. Lewers: I move that the answer be stricken out, and object to the question on the ground that it calls for a legal conclusion by the witness.

A. (Continuing) Well, as a matter of fact, patent did issue on that selection, under the decision of the Supreme Court of the United States, and not upon any other selection, the same selection proceeding.

Q. By Mr. Mills: What was the reason it did not issue on that selection, if you know?

A. Just a moment. The form of your question said "at that time." [3113]

Q. Well, what was the reason?

A. The Commissioner called for a re-arrangement of the selected lands and designation of different bases in certain cases.

Mr. Lewers: You say "a re-arrangement of the selected lands"?

Q. By Mr. Mills: Was there some trouble with the bases offered for the selected lands?

A. Evidently. It was discovered in the General Land Office. That is a matter with which we had nothing to do.

Q. Now, did the railroad company file another list subsequent to that time, which is marked "List No. 89, lands selected by the Southern Pacific Railroad Company, indemnity limits, main line", bearing serial number "03149" and afterwards canceled to "03151"?

A. Yes sir.

Mr. Mills: Let this be marked for identification as Plaintiff's Exhibit 12-Q.

(The list last referred to is marked Plaintiff's Exhibit 12-Q-L.L.)

Q. Is this the list you refer to, which I hold in my hands and now hand you?

A. It is.

Q. That is marked for identification "Plaintiff's Exhibit 12-Q"?

A. Yes.

Q. When was that received at your office?

A. September 6, 1904.

Q. Was it sent by mail?

A. I don't remember if it was sent by mail or express. We received papers at this time both ways from the Southern Pacific Company.

Q. You are positive it was received on September 6, 1904?

A. I am.

Q. And does it bear such an endorsement? [3114]

A. It does.

Q. In whose handwriting?

A. Mine.

Q. When was that endorsement made?

A. On the date on which it was received.

Q. Now, have you had sufficient dealings, in your official capacity, with the railroad company known as the Southern Pacific Railroad Company, to know whether that company was punctual in its correspondence with your office?

Mr. Lewers: I object to that as calling for vague and general conclusion, not defining any particular correspondence.

A. Well, I consider that they were as punctual or more punctual—more punctual, as a rule,—than any firm doing business with our office, or any person.

Q. Now, ordinarily, in your correspondence with the Southern Pacific Railroad Company, either by express or by mail, what space of time was necessary to get a letter or express package from that

company's office in San Francisco to your office at Visalia, basing your answer on your recollection during all the period of years that you have done business officially with that company?

A. In a few instances we have received correspondence, or papers, on the day on which they were written, but ordinarily, it was on the following day. I would state that when we received them on the date on which they were written, we got the same from the postoffice after the close of business hours. Please read my answer. (Answer read by Special Examiner.) "Correspondence and papers.

Q. Then if a paper was received from that company dated, September 6, 1904, either by express or mail or otherwise, on what date would the paper be sent from the office of the railroad company?

A. Well, if it was—

Q. That is, on what date, not earlier than what date? [3115]

A. I would expect it to be not earlier than the preceding day.

Q. Will you examine the papers which constitute this exhibit, "Plaintiff's Exhibit 12-Q", and compare them with the exhibit known as "12-M", all excepting the list of lands themselves, and state whether they are identical, and, if not, in what particulars? That is, exclusive of dates.

A. They appear to be, except the certificate signed by the Register and Receiver.

Q. And in what particulars is it different from

the list filed November 14, 1903, known as "Exhibit 12-M"?

A. No portion of the printed part of the certificate is canceled.

Q. That is to say, the words "returned and denominated as mineral land or lands, or", are left uncanceled?

A. Yes sir.

Q. In the last exhibit?

A. Yes sir.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit 12-Q.

Q. By Mr. Lewers: Just a question. Do you have any knowledge of when that was mailed to your office, or sent by express?

A. I have no knowledge.

Q. By Mr. Mills: "You have no knowledge". What do you mean by that?

A. Well, I have no knowledge of the date when it was sent from San Francisco, except—no definite knowledge—except that I presume it was sent on the preceding day.

Mr. Lewers: Same objection to the introduction.

Mr. Mills: I will ask the Special Examiner to extend Plaintiff's Exhibit 12-Q into the Record.

The papers last referred to and offered in evidence are marked "Plaintiff's Exhibit 12-Q - L.L." [3116]

Q. By Mr. Mills: Do you know of anything in the exhibit itself which would indicate that it was sent later than September 1st?

A. Later than September 1st?

Q. Yes.

A. The certificate of the Register of the United States Land Office at San Francisco, bearing date of September 2, 1904.

Q. Was that date on there as it is now when you received it?

A. It was.

Q. Now, referring to the list of lands in Exhibit 12-Q, what differences, if any, are there between those and the list of lands in 12-M?

A. The lands embraced in the two lists are the same thing, but in the later list they were made to agree with the description given in the plat of official survey.

Q. In Plaintiff's Exhibit E?

A. In Plaintiff's Exhibit E.

Q. Now, when you say the lands are identical, what lands do you mean are identical?

A. The selected lands.

Q. Well, is that true of the base lands?

A. No sir.

Q. Are there any differences?

A. Some changes were made in the base lands.

Q. Have you compared the selected lands, as appearing by Plaintiff's Exhibit 12-M, and also the selected lands in 12-Q, with the certified copy of the patent which was issued to the railroad company in pursuance of its selection of lands in that township?

A. I have compared them with the certified copy; yes.

Q. Does the patent agree, in point of description

of the lands conveyed, with the lands under the selection columns in 12-M, the [3117] first list, of November 14th?

A. No; it does not. While it embraces the same land, the description does not agree in designation of lot numbers with the letter and official plat.

Q. Does the description, in respect of the lot numbers, in Plaintiff's Exhibit 12-Q which is the selection list received September 6, 1914, agree with the lands in the certified copy of the patent.

A. They do.

Q. Now, referring to 12-M, which was the list accepted by you on February 26, 1904, do you know whether or not the Commissioner of the General Land Office returned the list which was sent to him by you?

A. I have no independent recollection of it, but his letter states that it was returned, and from that letter, and a subsequent letter written from our office to Mr. Eberlein, I am satisfied that it was.

Q. Before referring to that letter, I call your attention to this letter, which appears to be first in date, and ask you what it is a copy of.

A. The same bears date of July 14, 1904, and is a letter signed by me and written to the Commissioner of the General Land Office, transmitting the proof of publication of notice of the selection—over my certificate, isn't it?

Mr. Lewers: What is the date of that letter?

Mr. Mills: July 14, 1904.

The Witness: Is my certificate there?

Mr. Mills: Well, that don't make any difference.

Q. Now, is this a correct copy of the letter which was sent by you to the Commissioner on that date?

A. This was compared with the copy in our press copy-book and found to be correct, and it appears in Commissioner's Letter [3118] Book Vol. 40, on page 380.

Q. In your office?

A. In our office.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit 12-R, and will ask the Examiner to extend it into the record.

(The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-R L.L.")

Q. Now, in reference to your statement that the list 12-M was returned to your office by the Commissioner, I call your attention to copy of a letter dated August 4, 1904.

Mr. Lewers: Just a moment. I want to enter an objection to the letter of July 14, 1904, because it appears that there was an enclosure, a part of the letter which is not offered with it. It is incomplete.

Q. By Mr. Mills: What enclosures are referred to, Mr. Stewart, in that letter?

A. Proof of publication, proof of payment of the cost of publication, and non-mineral affidavit; also the Register's certificate of posting copy of the notice in the Land Office.

Q. Now, referring to the letter which I hand you, which appears to be a copy of letter of August 4,

1904, will you state who it is addressed to, and by whom?

A. It is addressed to the Register and Receiver at Visalia, California, and signed by J. H. Fimple, Acting Commissioner of the General Land Office.

Q. Did you receive the original letter of which this is a copy?

A. Yes sir.

Q. Is this a correct and compared copy?

A. Yes sir.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit [3119] 12-S, and will ask the Examiner to extend it into the record.

The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-S L.L.

Q. I call your attention to the last paragraph of this letter, which reads as follows: "Such selections will not be permitted. Said list No. 89 is herewith enclosed, and you will return the same to the company in order that a new list may be filed, properly describing the lands selected by legal subdivisions, and the errors in the bases assigned can at the same time be corrected." Did you, in pursuance of that instruction, return the company's list—or, I mean, the list of lands selected by the company, which was returned by the Commissioner to you, to the Southern Pacific Railroad Company?

A. While I have no independent recollection of it, I am satisfied that I did.

Q. I show you this letter, Mr. Stewart, and ask you what it is a copy of.

A. This is a copy of a letter signed by myself as Register, on the form used in such cases supplied to us by the General Land Office.

Q. Dated?

A. Dated August 10, 1904, addressed to Charles Eberlein at San Francisco, and calling attention to the requirements contained in the Commissioner's letter of August 4, 1904, now marked as Plaintiff's Exhibit 12-S.

Q. Did you send the original of which this is a copy to Mr. Eberlein through the mails?

A. I did.

Q. And on the date which the letter bears, August 10, 1904?

A. Well, it was mailed on that date.

Q. Well, that is what I mean. [3120]

A. Yes sir.

Q. That is, you deposited it in the postoffice on that date?

A. Yes sir.

Q. Properly addressed to him?

A. What I meant was this: All of our service, where it is not made personally, is by registered mail; and if it arrives too late at the postoffice for their hour of closing their registered letters on that date, they forward it the next day, but we deposit it in the postoffice.

Q. Well, you deposited it in the mail on that date, properly addressed to Mr. Eberlein, on August 10, 1904?

A. Yes sir.

Q. By Mr. Lewers: Have you any independent recollection of that?

A. I have not.

Q. By Mr. Mills: And with the postage prepaid?

A. No postage. That is an invariable rule; there is never any postage.

Q. That is, because it was government mail, there was no postage?

A. No postage. But we did pay, when we had on a ten-cent registry fee, whatever the amount was that was required at that time.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit 12-T, and will ask the Examiner to extend it into the record.

The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-T-L.L." [3121]

Q. Has this been compared with anything at all, any record you have?

A. It is compared with the copy in our press copy-book. It was found in Registered Letter Book No. 7, page 469, said letter-book being a file in our office.

Q. And it is a true and correct compared copy?

A. It is a true, correct and compared copy.

Q. On September 12, 1904, which was the date, according to the endorsement, that the list of lands selected by the Southern Pacific Railroad Company, known as Plaintiff's Exhibit 12-Q was accepted, did you have on file in your office the Surveyor-General's plat of the lands involved in that selection, returning

those lands as mineral lands, reported to be more valuable for mineral than for agricultural purposes?

A. We did.

Q. Why was it that you did not cross out, then, by cancelation, the words "returned and denominated as mineral land or lands, or", in the sentence, "and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, or", in order to make your certificate comply with the facts?

A. It was a re-arranged list of the lands described in the list filed on November 14, 1903, and there were no notations to make on the tract book or plat book, and we had no occasion to examine either, and I had forgotten in regard to the mineral return.

Q. Then it was inadvertent on your part, or a mistake, was it?

A. Yes sir. Had there been occasion to look at the plat book, anything that would have called to my mind the amended return, I would have made the same erasure on that as I did on the one filed November 14, 1904.

Q. And put it up to the Commissioner, or the General Land Office, as to what disposition should be made upon that kind of a certificate? [3122]

A. Yes sir.

Q. I show you a letter which purports to be a copy of a letter signed by you, addressed to Charles W. Eberlein, dated September 6, 1904, and will ask you if this is a true, correct and compared copy of such a letter—original letter—sent by you, properly

addressed, to Charles W. Eberlein, deposited in the mails on that date.

A. It is.

Q. Where is that recorded in your office?

A. In the press-copy-book known as "Registered Letter Book" No. 7, page 485.

Mr. Mills: I will offer this in evidence as Plaintiff's Exhibit 12-U, and will ask the Examiner to extend it into the record.

The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-U - L.L."

Q. I show you what purports to be a copy of a letter dated September 14, 1904, addressed to Charles W. Eberlein, by yourself, and will ask you whether that is a true, correct and compared copy from the official records in your office, of the original letter deposited by you in the mails on that day, addressed to Charles W. Eberlein.

A. It is, and it was compared with the press copy letter in Register Letter Book No. 7, page 499.

Q. Where the same is recorded?

A. Yes sir.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit 12-V, and ask the Examiner to extend it into the record.

(The copy of letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-V - L.L.")

[3123]

Q. I show you copy of a letter sent by you to the Commissioner of the General Land Office, dated September 14, 1904, and will ask you if it is a true,

correct and compared copy, from the official records of your office, of the original letter sent by you to the Commissioner on that date by depositing the same in the mails.

A. It is. And it is found in our office in the press copy-book known as "Commissioner's Letter Book 40, page 457.

Q. That is the book you have been referring to right along as on file in your office, one of the files in your office?

A. One of the books; yes sir.

Mr. Mills: We offer that in evidence as Plaintiff's Exhibit 12-W, and will ask the Examiner to extend it into the record.

(The letter last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-W - L.L.")

Q. Is this, now, the complete record, so far as you know, of the matters and things officially known to you in connection with the selection of the lands in this suit by the Southern Pacific Railroad Company, so far as your office is concerned?

A. I think it is. I think this even embraces the letter in regard to the fees.

Q. Now, during the pendency and consideration of this List No. 89, of the Southern Pacific Railroad Company, for the lands involved in this suit, and embraced in that selection list, was there, at any time, any evidence concerning the mineral or non-mineral character of this land presented to or considered by yourself as Register, or by the Receiver, of the United States Land Office at Visalia, California,

other than as appears in these papers which you have produced, that is, these two lists?

Mr. Lewers: I object to the question, on the ground that it is calling for irrelevant, immaterial and incompetent testimony, and is not rebuttal of any matter brought in the defense in this [3124] case.

Mr. Mills: What is the answer?

A. Nothing that I recall.

Q. What do you mean by "Nothing that you recall"? Was there any evidence at all offered to you as to the mineral or non-mineral character of these lands, excepting what we find in these two selection lists?

A. No sir.

Q. Did you forward to the General Land Office, at any time during the period I have mentioned, while that matter was being considered, any evidence at all of the mineral or non-mineral character of the lands involved in this suit, excepting what appears in those lists?

A. I think not.

Q. Well, you are sure of it, are you not?

A. I am quite satisfied that we did not.

Q. The only evidence which was offered during the pendency and consideration of this matter as involved in these lists was the non-mineral affidavits of Charles W. Eberlein, was it not?

Mr. Lewers: To which I object, on the ground that it is leading and suggestive, and is calling for the conclusion of this witness as to evidence received at

some other office than his own as well as evidence received in his office.

Mr. Mills: I am speaking now of your own office.

Q. Was there any evidence at all received at any time during the pendency or consideration of this list of lands.

A. And referring to this list?

Q. Referring to these particular lands, excepting the several affidavits, as appear in those lists, by Charles W. Eberlein, as Acting Land Agent of the Southern Pacific Company.

A. No sir; nothing relating to these lists.

Q. Did you forward to the General Land Office all of the [3125] evidence as to the mineral or non-mineral character of these lands which you considered—you and the Receiver considered?

A. We did.

Q. Referring to the—

A. Except this: We considered the return on the plat, which we did not forward for the fact that they had a copy in their own office, of course.

Q. Now, referring to complete correspondence, so far as the official files in your office show in respect to these lands which you say you have now produced, you don't mean by that, do you, the correspondence with reference to the suspension of these lands,—the telegrams of suspension?

A. No; I don't.

Mr. Mills: Will you be satisfied to have the extension in the record, after they are compared with these papers, without certified copies?

Mr. Lewers: Yes; on the condition that you produce all of them. There are two letters, as I read the record, that are not produced.

Mr. Mills: If we can find those, we will do it.

Mr. Lewers: They are two important letters, too.

Mr. Mills: Can you give me a citation to them?

Mr. Lewers: Yes. Letter of February 11th, and letter of February 20th, 1904. They are the most vital letters in the whole bunch. I know what they are.

Mr. Mills: I think those are already in evidence, Mr. Lewers. I think they were put in evidence down there in Washington,—those very letters.

Mr. Lewers: Yes; but the letters received by Mr. Stewart—that they were received by Mr. Stewart does not yet appear. They were sent from Washington. We have proved that much.

Mr. Mills: I think the copies were put in in Washington, [3126] weren't they?

Mr. Lewers: Yes.

Mr. Mills: In the record?

Mr. Lewers: Yes.

Mr. Mills: Well, I will admit that he received them, if they were addressed to him.

Mr. Lewers: I have not my transcript here, and, of course, not knowing that Mr. Stewart was going on the stand—

Mr. Mills: If you have got the letters, or can get them out of the transcript, I am willing to agree that if they were addressed to him they were sent to him and he received them.

Mr. Lewers: They are the letters, as I recollect it, reporting that the lands had been investigated by the agent sent out by the Land Department, and reported to be non-mineral.

Mr. Mills: There are no such letters in evidence, at all, as that.

Mr. Lewers: Well, those are the two letters; and I shall insist upon their being produced. If it is agreed they will be produced later, it is all the same to me.

Mr. Mills: You don't have any objection to our having the transcript of the record appear for these exhibits, and leave these exhibits in evidence, without furnishing certified copies, do you?

Mr. Lewers: Mr. Stewart has assured me that these were compared by himself and Mr. Swain, and he knows them to be correct. The certificate would add nothing to that; so I shall not ask it.

Q. By Mr. Mills: I call your attention, Mr. Stewart, to Plaintiff's Exhibits 9-B, 9-U, 9-C, 9-D, 9-E, 9-V, 9-W, 9-X, 9-Y, 9-Z, 9-F, 9-A, 9-G, and 9-H, and will ask you if you have made careful examination of those papers since you arrived in San Francisco.

A. I have. [3127]

Q. When did you arrive in San Francisco?

A. Tuesday morning of this week.

Q. These papers constitute the record of proceedings in the case of Louthain v. Munzer, a contest case pending in the office of the Register and Receiver at Visalia, California?

A. Yes sir.

Q. Did you go over each page of that record after you got here?

A. I think I examined every page there except those—except the certified copies of documentary evidence.

Q. Yes. That is, you examined all the oral proof.

A. Yes.

Q. Now, was that contest case heard before you and the Receiver at Visalia?

A. It was.

Q. Do you know whether the witnesses were sworn there and testified?

A. They were. I presided at the hearing.

Q. Now, basing your answer on your recollection of the testimony and the examination which you made of this record, can you now state whether each and every witness testified as appears by that record?

Mr. Lewers: To which I object, on the ground that it is calling for incompetent testimony. That is not the proper manner of identifying an official document, a transcript of evidence.

Mr. Mills: I suppose you will admit, as matter of law, that a bystander in a courtroom can testify as to what a witness testified to, won't you, Mr. Lewers?

A. I am satisfied that it is a correct transcript of the testimony of the several witnesses who testified at that hearing.

Q. Did you at that time receive daily copy of the transcript?

A. We did. [3128]

Q. And did you read and consider it daily?

A. I didn't read it all daily. I simply—The different witnesses corrected their testimony, and they made several corrections in our office—that is, the expert witnesses—as shown by the marginal notes, over the signature of myself or the Receiver.

Q. These are photostatic copies, are they not?

A. I suppose that is what they would be called.

Q. That is, they are photographic copies?

A. Yes sir.

Q. And do they show the signatures of yourself and the Receiver?

A. They do.

Q. At any place?

A. Yes sir.

Q. Who was that testimony extended by, that is, who took the shorthand notes and afterwards extended it?

A. T. A. Elliott and Mrs. A. F. Southard.

Q. That testimony was taken under a stipulation that the transcript should be received by both parties to the contest as the original testimony as if signed and sworn to, that is, signed by the witnesses after being sworn to?

A. Yes sir; and the stipulation states that the testimony was to be taken by T. A. Elliott and Mrs. A. F. Southard.

Q. Yes. Do you know, as a matter of fact, whether they did take that testimony?

A. They did.

Q. Now, is that record, which you have now examined, and which constitutes all of the record in that

case, the same record which you transmitted to the General Land Office?

A. It is.

Q. That is, a certified copy of it?

A. A certified copy. There were several exhibits, of course, [3129] minutes, and so forth, that are not here; but that is a copy of the transcript of testimony.

Q. That is a copy of the original testimony?

A. Yes sir.

Q. Sent by you to Washington?

A. Yes sir.

Q. I call your attention to Plaintiff's Exhibit 9-A, which appears to be a certified photographic copy of your certificate, as Register, certifying that the hearing in the case of Guy Louthain, et al v. F. G. Munzer, et al., was duly had before said office, that is, the United States Land Office, at Visalia, California, on January 9, 1912, and following days, and that all witnesses, before testifying, were by yourself duly sworn to tell the truth, the whole truth and nothing but the truth, in said action. Then follows the following: "I further certify that the testimony at said hearing was taken in shorthand by T. A. Elliott and A. F. Southard, by stipulation entered into by said parties and made part of this record. In witness whereof I have set my hand", and so forth, "this 15th day of October, 1915. George W. Stewart, Register." "Official designation of Officer." Do you recognize your signature from that photographic copy?

A. I do.

Q. Did you sign that?

A. I did.

Q. And on what date did you sign it?

A. October 15, 1913.

Q. Do you know how that figure "5" came to be put after the figures, "191", instead of "3", making it "1915"?

A. I do not. It was an inadvertent error.

Q. Who did it?

A. I don't know whether it was the clerk in the office or myself. I very rarely touch the typewriter, but, sometimes, when [3130] he is busy, I do.

Q. Well, do you know that it was signed by yourself last October?

A. I do.

Q. By Mr. Lewers: And that it was not signed in 1915?

A. Yes.

Q. By Mr. Townsend: You were at the World's Fair in 1915, weren't you?

A. I believe I was.

Q. By Mr. Mills: I show you this letter. What is that?

A. This is a letter from the Assistant Commissioner of the General Land Office to the Register and Receiver of the United States Land Office at Visalia, stating that the transcript of the testimony in the case had been sent to Mrs. Southard for her certification.

Q. This is dated November 1, 1913. Do you know

the signature of C. M. Bruce, Assistant Commissioner?

A. I do.

Q. How do you recognize it?

A. From the many letters that we have received bearing his signature.

Q. In official correspondence?

A. Yes sir.

Mr. Mills: We offer this in evidence as Plaintiff's Exhibit 12-X, and ask that the Examiner extend it into the record.

Mr. Lewers: We object, on the ground that it is hearsay.

(The letter last referred to and offered in evidence is marked Plaintiff's Exhibit 12-X - L.L.'')

Q. By Mr. Mills: Now, what are these papers I hand you, four in number?

A. Those are sheets from the serial number register in our office, which was forwarded to me since I came here, and I removed [3131] these from the serial number register today in order that it may be returned to the office for daily use. These are—

Q. Take the first one that you are going to use.

A. These are a record of the applications for patent for the Fuller's Earth No. 20 Placer Mining claim, embracing the south-west quarter of Section 24, Township 30 South, Range 23 East, M. D. M.

Mr. Mills: Better mark that for identification as Plaintiff's Exhibit 12-Y. (Paper last referred to is marked Plaintiff's Exhibit 12-Y - L.L.) We will offer this in evidence, and ask the Examiner to extend

it into the record in tabulated form as it appears here.

Mr. Lewers: I object to the introduction of that testimony on the ground that it is hearsay testimony of a matter taking place between other parties not parties to this litigation in any manner, shape or form, and not authorized to represent any of the parties to this litigation or to make any statements which would be binding upon any of the parties to this litigation; that it is not rebuttal testimony; that it is irrelevant and incompetent. And I ask that the same objection be considered as made to all similar documents, as I apprehend that you are going to offer three or four more of the same kind.

(The sheet of record last referred to and offered in evidence is marked "Plaintiff's Exhibit 12-Y - L.L.", and a copy thereof, certified by the witness as "Register" and furnished to the Special Examiner is filed as Plaintiff's Exhibit 12-Y - L.L.)

The Witness: I will state that the said mineral application bears "Serial No." 04010. Said notation also shows that on May 17, 1913, an adverse claim, numbered 04132, was filed, affecting said land.

Q. By Mr. Mills: Does this involve the contest which is generally known as the contest or protest of the Associated Oil Company, through certain locators to the mineral claim on the land of the Eight Oil Company through certain locators? [3132]

A. It affects certain lands embraced in the case of Louthain et al v. Munzer et al.

Q. I say, isn't it generally known as the contest

between the Associated Oil Company and the Eight Oil Company, through certain locators?

A. Well, the contest bears the title that I gave, but the Associated Oil Company appeared to be the parties in interest.

Mr. Lewers: I move that that be stricken out, as a conclusion of the witness, and on the same general grounds as the objection heretofore made to that class of testimony.

Q. By Mr. Mills: Do you know whether any attorneys who appeared for the Associated Oil Company in other cases, appeared in this case?

Mr. Lewers: I object, on the ground that that is irrelevant and immaterial, and not rebuttal testimony.

A. We had no cases where they appeared by name.

Q. By Mr. Mills: Well, where they were a party in interest, what attorneys appeared for them before the Land Office?

Mr. Lewers: I object, as calling for a legal conclusion, and as not the best evidence.

Mr. Mills: Well, this record shows they had an interest in this case, Mr. Lewers, by exhibits introduced by the attorneys for the Associated Oil Company showing that they owned the rights of the locators.

Mr. Lewers: I don't intend to argue my objection with you. I have made it.

A. Charles G. Lamberson and E. C. Farnsworth.

Q. By Mr. Mills: Yes. Who appeared, then, for

the locators, backed by the Associated Oil Company, in this protest on Plaintiff's Exhibit 12-Y?

Mr. Lewers: I object, on the ground that it is calling for the conclusion of the witness; the question assumes something that [3133] the witness has not testified to.

A. This application has not been involved in any protest. The hearing to which you refer related to some lands embraced in mineral application 02710, and Charles G. Lamberson and E. C. Farnsworth appeared for the protestants at that hearing.

Q. By Mr. Mills: Well, in those protest proceedings, were there any exhibits offered before you, for your consideration, showing a transfer to the Associated Oil Company of any interests of those locators?

Mr. Lewers: I object, on the ground that the documents, if any such exist, are the best evidence.

Mr. Mills: You may answer.

A. There were agreements or documents of some kind exhibited showing the Associated Oil Company to be the principal party in interest.

Mr. Lewers: I move that the last part of the answer of the witness be stricken out, as a conclusion, not the best evidence.

Q. By Mr. Mills: Will you explain these three sheets of paper, in detail, including also Plaintiff's Exhibit 12-Y. I will first have these others marked, in their order, 12-Z, 13-A and 13-B.

(The sheets last referred to, other than the sheet previously marked "Plaintiff's Exhibit 12-Y - L.L".

are marked respectively "Plaintiff's Exhibits 12-Z, 13-A and 13-B - L.L." inclusive.

A. Plaintiff's Exhibit 12-Y is a copy of the notation on our serial number register, and refers to mineral application 04010, just referred to. The notation thereon shows the filing of an adverse claim bearing serial number 04132, filed on May 17, 1913. On Plaintiff's Exhibit 13-A is a notation regarding said adverse claim, the adverse claimants being W. S. Lierly, G. L. Blosser, Mrs. H. J. Dover, Margaret E. Dover, Executrix of last will and [3134] testament of J. M. Dover, deceased, S. A. Quimby, W. A. McNeil, F. N. Kaufman, and J. W. Kay by W. F. Lierly, Agent and attorney-in-fact, and is against the mineral application 04010 just referred to, and embraces the same land.

Q. Which one are you referring to now?

A. That is the adverse claim.

Q. Who appears there as the attorney?

A. Edmund Tauszky, of 702 Sharon Building, San Francisco.

Q. He is the attorney for the Associated Oil Company, is he not?

A. I don't know.

Q. Do you know where the Associated Oil Company's offices are—what building?

A. I do not.

Q. All right.

A. Exhibit 12-Z is a copy of application—

Q. You need not read all those names. Say "so and so et al."

A. (continuing) For mineral claims, mining claims, embracing Lots 2, 3, 4, 5, 6, 7, 10, 11, 12, 13 and south half of northwest quarter of Section 24, Township 30 South Range 23 East, M. D. M., which has not been adversed.

Q. What do you mean by "adversed?"

A. When rival mineral claimants file in our office, during the period of publication of a notice of application for patent and adverse claim their right to the land, the same suspends all proceedings in our office until this adverse is disposed of in the courts. Upon the date upon which an adverse claim is received, we notify the adverse claimants and the applicant thereof, by registered mail, and also notify the Commissioner of the General Land Office, of the filing of the adverse claim. This stops all proceedings in the Land Depart- [3135] ment until we receive official notice of the closing of the case in the courts.

Q. Well now, in the case of *Munzer v. Louthain*, or *Louthain v. Munzer*, as to which you neglected to send in a certificate until it was called for in October last, what was the reason that record was sent in without the certificate in the first instance?

A. The application for patent was withdrawn.

Q. By whom?

A. By the mineral applicants.

Q. Well, who were the mineral applicants?

A. *Munzer et al.*

Q. *Munzer, et al?*

A. Yes.

Q. Now, were Munzer, et al., the record claimants?

A. They were.

Q. Backed by the Eight Oil Company.

A. We didn't know them as such until that hearing was had.

Q. Well, did you then know that they were backed by the Eight Oil Company?

A. We did, by the evidence that was introduced.

Q. Now, what was the reason that the certificate was not attached when you sent the record that the certificate was not attached when you sent the record in to the General Land Office?

A. The relinquishment of an entry or withdrawal of an application to enter or select closes a contest or protest case affecting the lands embraced in such entry or selection.

Q. What closes it, did you say?

A. The relinquishment of an entry or withdrawal of an application selected by another. The case was therefore closed [3136] in our office. It was formerly the practice to retain in our office these papers of all rejected applications on dismissed contests; but this was changed a few years ago, and now the papers in all closed cases are forwarded to the General Land Office, and, owing to this being a closed case and not to be decided by our office, I noticed, when transmitting it, that the usual affidavits and certificates were not attached, but didn't consider it necessary, and forwarded them without it.

Q. Now, was there a subsequent application

made, on the basis of the discoveries of the Associated Oil Company, by the original applications, or for any other reason, that you know of?

A. There was subsequent application made, based on discovery of oil, but I don't know by whom the discovery was made.

Q. And that application was made by the original applicants, was it not?

A. I am not certain that they were the same ones in each case, but I think they were. There were eight applicants.

Q. Yes. Now, what did the former protestant do in respect to that application, that is, the protestants who had been backed by the Associated Oil Company?

A. When the withdrawal of the application for patent was filed in our office, we notified the attorneys for the protestants.

Q. Who?

A. I don't know whether it was myself or the Receiver.

Q. I mean who did you notify?

A. Charles G. Lamberson and E. C. Farnsworth, both residents of Visalia.

Q. Yes.

A. We notified them of the withdrawal of the application. I will state that we notified Mr. Lamberson and attempted to [3137] notify Mr. Farnsworth, but he was out of his office. Mr. Lamberson came over and looked at the withdrawal, and said, "Well, that closes the case." Mr. Farnsworth came later

and asked to see the withdrawal, and I don't remember that he made any remark at all. A day or two Mr. Lamberson was in our office and we asked him if he intended to take any further action regarding the matter. He said he didn't, that their object was accomplished, which was the extinguishment of that application for the patent. Mr. A. H. Swain, Receiver of the Land Office was present, and said, "I suppose, then, there is no reason why the record may not be sent to the General Land Office."

Q. What I am getting at is this: Was there a subsequent application made, and, if so, what became of it? Was it adversed?

A. Yes. That is what I have just testified to.

Q. Yes. That is what you referred to when you said the subsequent application made by the locators, backed by the Eight Oil Company, was adversed.

A. Well, the subsequent application by the former locators; but nothing in the application to show by whom they were backed.

Q. I thought you said here that you knew, from something that was present before you for consideration during the contest of one of those cases—

A. No; that was with regard to the Louthain case. This becomes a new application, which has never been under protest, although the same lands were affected.

Q. Now, that has been adversed by whom?

A. The parties whose names I just read, W. F. Lierly and others.

Q. And those are the parties who were represented by the attorneys of the Associated Oil Company. [3138]

A. Represented by Edmund Tauszky in this adverse.

Q. Now, where is that pending? Do you know?

A. No; I don't.

Q. What court?

A. I don't.

Q. So far as you know, then, the Associated Oil Company is still after a patent to the lands on Section 24 and 26 of 30-23 and Section 30 of 30-24.

A. We don't know them to be connected with this second application.

Q. Well, do you know them to be connected with any application.

A. The evidence introduced in the hearing covering the Louthain application shows them to be parties in interest.

Q. Yes. Are they after a patent in that case?

A. Not that I know of.

Q. They have adverseed it—the locators, represented by the Associated Oil Company, have adverseed that application of the original locators in the Louthain case, have they not, according to your records? I mean the same locators you identified by the exhibits in the case as being connected with the Associated Oil Company and backed by them?

A. Not all of those mentioned in this adverse claim appeared at the hearing; but part of the adverse claimants appeared at the hearing.

Q. Well, are any of them locators identified in interest with the Associated Oil Company, who adverse the claim, is what I want to know.

A. The Associated Oil Company has not adverse the claim, but part of those who did adverse the claim were the same ones who appeared in the former hearing, in which the Associated Oil Company appeared to be interested. [3139]

Q. Referring to Plaintiff's Exhibit 13-B, what is it a record of?

A. This is the notation on the serial number register, and bears "Serial No. 02916," and is an application by The Eight Oil Company, by S. P. Wible, attorney in fact, for patent for the Fullers' Second Consolidated Placer Mining claim, embracing all of Section 30, Township 30, Range 24 East, M. D. M.

Q. Now, what is the present status of that application for patent?

A. That was embraced in the hearing known as Cage v. The Eight Oil Company.

Q. Was that held before you?

A. Yes; held before our office.

Q. And is involved in these papers, in the certified copies introduced in this case of John D. Cage v. Eight Oil Company?

A. Yes sir.

Q. Now, what is the present status of the application?

A. After the hearing was completed, stipulations were filed extending the time for the protestants to file their brief. This they have done, but I can't state

on what date it was filed, for I have not the contest docket there.

Q. By "the protestants", you mean Cage et al?

A. Yes. Lamberson and Farnsworth were the attorneys.

Q. Now, what company is backing the locators or protestants known as "Cage et al.," against the Eight Oil Company?

Mr. Lewers—To which I object, on the ground that it is calling for incompetent testimony, as being hearsay, and not rebuttal.

Q. By Mr. Mills—From your knowledge, based on the records produced before you in that hearing.

Mr. Lewers—I add the further objection that the records [3140] themselves are the best evidence.

A. I would have no knowledge, except from the records, and the records show the Associated Oil Company were interested.

Mr. Lewers—Move that the answer be stricken out, on the grounds of the objection.

Q. By Mr. Mills—Now, as I understand you, the parties backed by the Associated Oil Company, who constitute the protestants to the application for patent for the Eight Oil Company for Section 30, 30-24, have recently filed their brief in that case?

A. Yes.

Q. And what holds up a decision in the case now?

A. The time for filing the answer—

Q. The reply brief?

A. —the reply brief has been fixed by stipulation;

but I don't remember the date on which that is to be filed.

Q. So that that matter is now pending before you, is it?

A. Yes sir.

Q. For decision.

A. And after the filing of the reply brief, the protestants will file their closing brief.

Q. I call your attention, Mr. Stewart, to the testimony, which appears in this record at pages 3541, 3542 and 3543, of Eugene Overton, a witness produced on behalf of the defense. At the bottom of page 3541, he says: "In April, 1909—I have not got the exact date—a protest and contest was filed as to the north-east one-quarter of Section 12, by P. Barrett. That was tried January 25th and 26th, 1910, in the Visalia Land Office. On October 3, 1912, it was decided against the contestant. Q. By Mr. Lewers: Decided in your favor? A. Decided in our favor." Do you know what that contest was about?

A. What it involved? [3141]

Q. Yes.

A. Yes. It involved the mineral character of the land.

Q. "Q. By Mr. Mills: In that particular case a re-hearing has been applied for and granted, has it not? A. Not granted, as far as I know. It has been applied for. I have not received notice it has been granted. It has been? Q. I am asking you the question. A. No; I don't know that it has been granted. Q. You know a re-hearing has been asked

for, however? A. I know a re-hearing has been asked for; yes. Then, as to the north-west quarter of Section 12, on April 8, 1909, a contest was filed by J. M. Dunn. That has never been tried. As to the south-east one-quarter of Section 12, in April, 1909, a contest was filed by O. O. McReynolds. That was tried at the same time as the last trial that I mentioned and decided at the same time in the same way. As to the south-west one-quarter of Section 12, in April, 1909, a contest was filed by G. W. Derby, and that was decided at the same time and in the same way. Q. Have re-hearings been asked in all those cases? A. I think so. Q. You don't know whether it has been granted, do you? A. I do not now. How, was that all? Mr. Mills—That is all.” 3543, “Re-direct Examination, by Mr. Lewers. Q. Those contests were contests where the contestants claimed that this was mineral land? A. They did, yes. Q. And you say the decision of the Register and Receiver was that it was not mineral land? A. That was the decision.” Is that correct?

A. No sir.

Q. Can you refer to any book or file in your office which contains a copy of that decision?

A. Yes sir.

Q. What is this book I hand you?

A. This is the press copy book of decisions.

Q. In your office, kept in your official custody?

[3142]

A. Yes sir.

Q. And does this decision, beginning at page 148,

and extending through 149 to 150, represent the decision in the cases referred to by Mr Overton in his testimony?

A It does. Those three cases were consolidated at the hearing, and one decision covers the three.

Q Do you know Mr Overton as the attorney for the Buena Vista Land & Development Company?

A I do.

Q Do you know whether they were attempting to acquire mineral lands down there under agricultural entry?

A Well, they were attempting to acquire lands there under an agricultural entry.

Q Now, what was the gist of the decision in that case?

Mr Lewers — I suggest the decision in the best evidence, itself.

Mr Mills — I am going to introduce it in evidence.

Mr Lewers — Then why ask the gist of it at the same time?

A We found in favor of the claimants.

Q Read the last paragraph.

A The last paragraph is as follows: "We find from the evidence submitted that said land possesses little value for agricultural (grazing) purposes, and that, while the geological formation, and the development on adjacent territory, are such as to indicate that said land may by future development prove to be valuable for the production of oil, it was not at the date of hearing demonstrated to be mineral in

character. It is recommended that said protests be dismissed.”

Mr Mills— We offer in evidence and will ask to have extended into the record this decision, beginning at page 148 and ending at page 150.

Mr Lewers — Absolutely no objection. [3143]

The decision last referred to, offered in evidence and extended into the record (Appears in volume of exhibits.)

CROSS-EXAMINATION

of

GEO. W. STEWART.

By Mr Lewers:

Q Mr Stewart, did you pick out all of the letters yourself that were produced here by you, or were they picked out and designated to you by anyone else?

A I think I picked them out myself. Mr Swain might possibly have picked out some of them.

Q What were you requested to pick out, and by whom?

A Well, I think by Mr Dezendorf, the Chief of Second Field Division — he requested copies of all correspondence relating to these lands.

Q Relating to these lands?

A Yes. That is, the selection.

Q That is, the lands involved in List 89?

A Yes sir.

Q I notice that one of the letters which you have produced here, being the letter of February 20, 1904,

addressed to the Register and Receiver at Visalia, and signed by W. A. Richards, Commissioner, refers to Letters "N" of this office, dated February 11th and 20th, 1904, which letters are not produced. Have you those letters?

A I think they are in our office. I am quite well satisfied they are.

Q Will you, when you return to your office, have similar copies made and compared by yourself and furnish them to the Commissioner in this case?
[3144]

A Yes sir.

Q And consent that they may be entered as evidence in connection with this selection?

A Yes sir.

Mr Lewers — You have no objection to that, have you?

Mr Mills — Well, I don't know. I might have an objection for immateriality, or some other reasons. I don't know. I have never seen them myself, unless they are in the record as introduced at Washington.

The Witness — May I state why they were not?

Mr Lewers — Have you any other explanation to make in connection with that?

A The reason that copies were not presented with these was, as I remember them, they refer to the revocation of the suspension, and List 89 not being noted thereon, we didn't think of making copies. But they do involve this land.

Q Your attention was not called to the reference,

in this letter of February 20, 1904, to the letters which I am asking for, was it?

A No sir.

Q That is how you happened to overlook it?

A Yes sir.

Mr Lewers — I suggest, Mr Stewart, that you send those letters to me, and I will then offer them in evidence.

The Witness — Very well.

Mr Lewers — So that this record may be complete in that respect.

The Witness — Very well.

Q By Mr Lewers — I call your attention to a certified copy, under the seal of the United States General Land Office, of a letter dated July 14, 1904, addressed to the Commissioner of the General Land Office, and signed George W. Stewart, [3145] Register, together with certain endorsements and enclosures, and ask you if that is your signature.

A Yes sir.

Mr Mills — That is the same letter, isn't it?

Mr Lewers — Yes; but this has an enclosure.

Q I call your attention to a photographic copy of an affidavit of publication—

Mr Mills — Just a minute, until I see what it is.

Q By Mr Lewers — (continuing) — and ask you if that is the enclosure referred to in your letter; whether that is the enclosure referred to in your letter—that affidavit of publication.

Mr Mills — I object to the question, because the certificate on the copy offered Mr Stewart does not

identify those papers as a part of those enclosures — unless he can remember to say that they are the enclosures referred to in the letter.

A I am satisfied that they are.

Mr Mills — What is the answer?

A I am satisfied that they are.

Mr Lewers — I offer this certified copy, and all the documents contained within it, in evidence as Defendant's Exhibit 204, and ask that it be extended into the record.

Mr Mills — I think that is all in evidence already by the evidence of the plaintiff.

Mr Lewers — You are entirely mistaken.

The documents last referred to and offered in evidence are marked "Defendant's Exhibit 204 L. L." (Appears in volume of exhibits.)

Q I call your attention to certain papers, attached together, and certified under the seal of the General Land Office, under date of July 16, 1913, consisting of copy of [3146] letter signed by yourself, addressed to the Commissioner of the General Land Office, dated December 11, 1903, photographic copy of notice of appeal in regard to Southern Pacific Railroad Company's List No. 89, signed by William Singer, Jr., attorney for appellant, and William F. Herrin, counsel for appellant, together with notations and endorsements as the same appear on the record on file in the General Land Office, and ask you if that is the notice of appeal to which you have referred as being filed in that case.

A I am satisfied from my own signatures thereon, and the notations made, that it is.

Q It is? The same one?

A Yes.

Mr Lewers — We offer these certified copies, bound together, in evidence, as Defendant's Exhibit 205, and ask that they be extended into the record.

Mr Mills — No objection.

The documents last referred to and offered in evidence are marked "Defendant's Exhibit 205 L. L." and (Appears in volume of exhibits.)

Q Referring, Mr Stewart, to the serial numbers noted on the outside of the lists that have been introduced in evidence, state by whom those serial numbers are put on there.

A That number is only on one. I put that on.

Q That was put on in your office?

A Yes sir.

Q Where is the White River Mining District, which you say is the only organized district in the Visalia Land District?

A I think it embraces land in the Southern part of Tulare County, and the northern part of Kern, and while I don't know all the land it embraces, it is about in Township 24, in 21 South, of Range 29 East, M.D.M. [3147]

Q And what minerals, if any, are in that district?

A Gold is all that I know of, so far as applications have been made to our office for patent.

Mr Lewers — That is all.

REDIRECT EXAMINATION
OF
GEO. W. STEWART.

By Mr Mills:

Q There is one other question I would like to ask you: You don't mean to say that there are no organized mining districts in your district except that, from your own knowledge, do you?

A I know it from the business that has been transacted in the office, and that applications for patents in every other part of the district, except in the White River Mining District, show the notice of location to have been recorded in the offices of the county recorders and not in the office of the local mining district recorder.

Q Well, what I mean to say is, you have no knowledge excepting what appeared before you officially?

A No.

Q On that question?

A No.

Q There might be organized mining districts there that you know nothing about unless it came before you officially?

A It might be. Not probable, not likely.

Q By Mr Lewers — What is that last answer?

A I say it might be, but it is not likely.

Q By Mr Mills — Now, when you stated in Plaintiff's Exhibit 12-P, which is the letter addressed by you to Charles W. Eberlein, of March 5, 1904, as follows: "As part of the land [3148] applied for has been returned as mineral, and all is in a township con-

taining mining claims within six miles of mining claims, it will be necessary to make publication," and so forth, what did you mean by saying it was in a township containing mining claims? Did you refer to Township 30-23, in which these lands were situated?

A I did. I consulted our records and found applications for mineral patents for lands in that township, and within six miles of the land embraced in this application, which might have been in the same township or in the one adjoining.

Mr Mills — That is all.

RECROSS EXAMINATION
OF
GEO. W. STEWART.

By Mr Lewers:

Q Was there any other order of publication, or any other publication, for this particular application or selection?

A I think not. The first—No order was made for the list filed November 14, 1903, from the fact that it was rejected. And after it was—Let's see. I don't remember whether there was any made or not after we accepted it.

Q It was accepted in February, 1904, was it not?

A February 26, 1904; yes. I think that was the only publication made.

Q There was no publication ordered or made after the filing of the second or amended list, was there?

A I think not. No.

Mr Mills — It is understood that all these papers introduced are not objected to on the ground that they are not certified to or are not the originals?

Mr Lewers — No. [3149]

Mr Mills — He can withdraw these, can't he, for his files, by furnishing copies?

Mr Lewers — Yes.

Whereupon the further taking of testimony herein was adjourned until Friday, December 12, 1913, at 10 o'clock A.M., at the same place.

On Friday, December 12, 1913, the further taking of testimony by Plaintiff herein was adjourned, subject to resumption on notice to the Defendant and within the time limited by former stipulation, if, after further consideration, it is desired by plaintiff's counsel to put in further documentary proofs; but it was stated by Mr Mills that counsel for plaintiff, so far as now advised, do not contemplate putting in any further oral testimony in rebuttal.

On Monday, December 22, 1913, by stipulation and agreement of counsel for the respective parties, Plaintiff offered in evidence a pamphlet entitled "Some Problems of the Formation of Coal, Reprinted from Economic Geology, Vol. 111., No. 4, June-July, 1908," by David White, and the same was marked, "Plaintiff's Exhibit 13-C - L.L." and (Appears in volume of exhibits.) [3150]

“UNITED STATES LAND OFFICE

Visalia, California.

.....1903

List No. 89.

LANDS SELECTED

By The

Southern Pacific Railroad Company.

Main Line

(In pencil)

(In pen)

Received Nov. 14, 1903.

Received Nov. 14, 1903

Rejected Nov. 17, 1903.

Geo. W. Stewart, Register.

Geo. W. Stewart,

Rejected Nov. 17, 1903.

Register.

Returned from G.L.O. with

“N” of Feb’y 20, 1904.

Accepted Feb’y 26, 1904.

Geo. W. Stewart,

Register

(9-14-95-500.) [3151]

Office of the SOUTHERN PACIFIC RAILROAD
COMPANY

San Francisco, California.

I, JOSEPH L. WILLCUT, Secretary of the SOUTHERN PACIFIC RAILROAD COMPANY, do hereby certify that CHARLES W. EBERLEIN was appointed Acting Land Agent of the said Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad Company (of California), by the Board of Directors of said company, at a meeting held on the second (2nd) day of September, 1903, and that since that time he has

been continuously, and is now, the Acting Land Agent of the said Southern Pacific Railroad Company, successor as aforesaid.

IN TESTIMONY WHEREOF, I have
(Seal) hereunto set my hand and affixed the
Southern Corporate Seal of the said Southern Pacific
Pacific Railroad Company, the 7th day of
Rail Road November A.D. 1903.

Company. (Ink Hand Writing) *Joseph L. Willcutt*
Secretary of the Southern
Pacific Railroad Company. [3152]

(10-22-03-100) Form 3303

LIST OF LANDS IN THE

Visalia LAND DISTRICT, CALIFORNIA.
SELECTED BY THE
SOUTHERN PACIFIC RAILROAD COMPANY
Successor by Consolidation to the Southern Pacific
Railroad Company (of California).

- - - - -

THE UNDERSIGNED, the duly authorized Acting Land Agent of the SOUTHERN PACIFIC RAILROAD COMPANY, successor by consolidation to the Southern Pacific Railroad Company (of California), under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act Granting lands to aid in the construction of a Rail-

road and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California", and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it as such successor and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the Railroad and Telegraph of said Company; being in part for the Sixth (6th) section (Twenty (20) miles) of the same, commencing at Lardo and ending at Sumner which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

(Ink hand writing) *Charles W. Eberlein.*

Acting Land Agent of the Southern Pacific Railroad Company. [3153]

S. C. 65

1

South of Base Line and East of Mount Diablo
Principal Meridian Tracts within 20 miles of the line

of said Railroad in lieu of which the selected tracts are taken.

Remarks	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres		Remarks	No.
					100			
The S.320 acres of								
Frac'l N2 of Section								
1 in Rancho Las Uvas		1	10S	2E	320.			1
S2		1	6S	2E	320			2
Lot 3		3	13S	4E	36	49		3
Lot 5		3	13S	4E	37	18		4
Lot 1		15	8S	4E	38	64		5
Lot 4		7	6S	3E	40	85		6
Lot 13		21	8S	4E	36	40		7
Lot 2		15	8S	4E	38	64		8
Lot 3		15	8S	4E	38	64		9
Lot 4		15	8S	4E	38	64		10
N.E.4		31	5S	4E	160			11
Lot 5		15	8S	4E	38	63		12
Lot 6		15	8S	4E	38	63		13
Lot 7		15	8S	4E	38	63		14
S.E.4 of N.E.4		3	14S	4E	40			15
Lot 14		21	8S	4E	36	40		16
Lot 8		15	8S	4E	38	63		17
Lot 9		15	8S	4E	38	62		18
Lot 10		15	8S	4E	38	62		19
Lot 8		11	11S	6E	27	04		20
Lot 1 in N.E.4		27	11S	3E	13	78		21
Lot 11		15	8S	4E	38	62		22

The United States

3819

Lot <u>42B</u>	5	12S	7E	2 08	23
Lot <u>40a</u>	5	12S	7E	31 26	24
Lot <u>9</u>	27	11S	6E	9 19	25
Lot 13	21	8S	4E	36 40	26
Lot 6	33	11S	6E	4 48	27
N.80 acres of N.W.4 in					
Rancho	27	11S	3E	80	28
Part of S.W.4 in Rancho	27	11S	3E	79 10	29
S.41.40 acres of N.W.4					
in Rancho	27	11S	3E	41 40	30
All in Rancho	31	12S	2E	77 40	31
Lot 5	33	11S	6E	3 40	32
S.E.4 of S.W.4 in					
Rancho	1	13S	2E	40	33
E.2 of S.W.4	7	6S	3E	80	34
S.E.4 of N.E.4	31	11S	7E	40	35
S.W.4 of S.E.4	31	11S	7E	40	36
W.2 of W.2	31	9S	4E	160	37
The N.80 acres of that part					
of N.E.4 in Rancho	29	11S	1E	80	38
S.22 acres of that part of					
N.E.4 in Rancho	29	11S	1E	22	39
Lot 10 of Section	11	11S	6E	17 50	40

Carried forward

2.337 29

[3154]

S. C. 65

2

South of Base Line and East of Mount Diablo Principal Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

Remarks	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres		Remarks No.
						100	
Brought Forward—				2.337 29			
S.E.4 of SW4 in Rancho		1	13S	2E	40		41
S.E.4		31	5S	4E	160		42
Lot 6		31	5S	4E	80		43
Lot 7		31	5S	4E	80		44
N.E.4		7	24S	16E	160		45
All that part of W2 of							46
Sec. in Salis Rancho		25	10S	2E	185	61	47
All that part of Section							
in Rancho San Andres		33	11S	1E	275	20	
Lot 8		7	22S	19E	45	82	48
S.E.4 of S.W.4		23	14S	2E	40		49
N.40 acres of Lot 10 in							
SE4		7	13S	2E	40		50
S.13 acres of Lot 10 in							
SE4		7	13S	2E	14		51
Frac'l N.E.4 of N.E.4		1	13S	1E	35		52
Lot 7		33	11S	6E	5	64	53
Lot 6		27	11S	6E	31	44	54
Lot 46		5	12S	7E	8	18	55
Lot 1		3	13S	4E	15	36	56
N.100 acres of Frac'l N2							
of Sec. 1 in Rancho							
Las Uvas		1	10S	2E	100		57
N 60 acres of S2 of SW4		5	24S	16E	60		58

S 20 acres of S2 of SW4	5	24S	16E	20	59
Lot 38a	5	12S	7E	19 95	60
Lot 16	21	8S	4E	36 40	61
Lot 1	15	11S	6E	3 60	62
Lot 5	11	11S	6E	32 65	63
Lot 4	27	6S	3E	8 56	64
Lot 7	27	11S	6E	24 66	65
Lot 4	33	11S	6E	15 81	66
Lot 1 Frac'l NW4 of NW4	19	9S	4E	57 20	67
Lot 11	11	11S	6E	22 81	68
Lot 48a	5	12S	7E	26 73	69
Lot 7	11	11S	6E	12 20	70
Lot 9	11	11S	6E	21 43	71
Lot 41a	5	12S	7E	18 65	72
S 2 of NE 4	5	22S	19E	80 00	73
That part of Section in					
Salsipudes Rancho	35	11S	3E	34 83	74
Lot 45b	5	12S	7E	4 50	75
NW4 of NW4 in Rancho					
Rincon De Sanjon	23	14S	2E	40	76
SW4	1	21S	19E	160	77
S.2 of SW 4	33	9S	4E	80	78
S.2 of SW 4	15	10S	6E	80	79
S.2 of NW 4	5	22S	19E	80	80

Carried forward

4.593 52

[3155]

S C 65

(In pencil)

5

South of Base Line and East of Mount Diablo Principal

Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

Remarks	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres		Remarks No.
					100		
Brought forward				4593	52		
Lot 2		19	9S	4E	54	84	81
That part of NE4 in							
Rancho		27	11S	3E	26	30	82
Frac'l SW4 of SW4 in							
Rancho		19	9S	4E	50		83
Lot 5		27	11S	6E	27	23	84
W 2 of SW 4		33	7S	5E	80		85
W 2 of NW 4		33	7S	5E	80		86
Lot 4		19	5S	4E	32	49	87
Lot 8		33	11S	6E	6	68	88
Lot 12		15	8S	4E	38	62	89
Lot 1		21	10S	3E	1	83	90
SW 4 of SW 4		9	7S	4E	40		91
Lot 3		19	5S	4E	32	68	92
Lot 6		11	11S	6E	6	89	93
Lot 2		19	5S	4E	32	87	94
Lot 10		27	11S	6E	6	24	95
Lot 1		31	5S	4E	32	25	96
Lot 8		27	11S	6E	9	80	97
All of SW4 of NW4							
Rancho Rincon		23	14S	2E	23	80	98
Lot 12		11	11S	6E	15	81	99

Lot 5	1	21S	19E	39	69	100
W 2 of SE 4	1	21S	19E	80		101
Frac'l NW4	1	21S	19E	162	52	102
S 2	5	22S	19E	320		103
E 2	7	22S	19E	320		104

Total

6.114 06

[3156]

(2-3-03-250.)

RAILROAD LIST.

South of Base Line and East of Mount Diablo Principal

List of Selections made at Visalia, California, upon
th Indemnity List No. 89.

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres	100
1	N 2	15	30S	23E	320	
2	S 2	15	"	"	320	
3	Lot 1	17	"	"	36	92
4	Lot 2	17	"	"	35	63
5	Lot 3	17	"	"	39	19
6	Lot 4	17	"	"	40	00
7	Lot 7	17	"	"	35	74
8	Lot 8	17	"	"	36	24
9	Lot 9	17	"	"	40	84
10	Lot 10	17	"	"	40	
11	Frac'l SE 4	17	"	"	159	93
12	Lot 3	19	"	"	37	44

13 Lot 4	19	"	"	37 44
14 Lot 5	19	"	"	41 14
15 Lot 6	19	"	"	41 14
16 Lot 9	19	"	"	35 83
17 Lot 10	19	"	"	36 24
18 Lot 11	19	"	"	40 25
19 Lot 12	19	"	"	40
20 N.27.04 acres of Lot 7	19	"	"	27 04
21 S.13.60 acres of Lot 7	19	"	"	13 60
22 N.38.62 acres of Lot 8	19	"	"	38 62
23 S.196 acres of Lot 8	19	"	"	1 96
24 N.31.26 acres of Lot 13	19	"	"	31 26
25 S.8.97 acres of Lot 13	19	"	"	8 97
26 N.36.40 acres of Lot 14	19	"	"	36 40
27 S.3.83 acres of Lot 14	19	"	"	3 83
28 N 2 of NE 4	21	"	"	80
29 S 2 of NE 4	21	"	"	80
30 NE 4 of NW 4	21	"	"	40
31 N 77.40 acres of W 2 of N. W 4	21	"	"	77 40
32 S 2.60 acres of W 2 of N W 4	21	"	"	2 60
33 S.E. 4 of N. W 4	21	"	"	40
34 N 2 of S W 4	21	"	"	80
35 S W 4 of S W 4	21	"	"	40
36 S E 4 of S W 4	21	"	"	40
37 S E 4	21	"	"	160
38 N 2 of N E 4	23	"	"	80
39 N.22 acres of SE4 of NE4	23	"	"	22
40 S.18 acres of SE4 of NE4	23	"	"	18

Carried forward

2.335 85

[3157]

2 (2-3-03-250)

RAILROAD LIST.

South of Base Line and East of Mount Diablo Principal
Me List of Selections made at Visalia, California, upon
thi Indemnity List No. 89.

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres	100
Brought forward					2,335	85
41	S.W.4 of N.E.4	23	30S	23E	40	
42	N W 4	23	"	"	160	
43	N 2 of S W 4	23	"	"	80	
44	S 2 of SW 4	23	"	"	80	
45	S E 4	23	"	"	160	
46	Fractional N E 4	25	"	"	186	35
47	N.275.20 acres of W 2	25	"	"	275	20
48	S 44.80 acres of W 2	25	"	"	44	80
49	Lot 9	25	"	"	25	40
50	Lot 8	25	"	"	25	40
51	Lot 7	25	"	"	13	41
52	N 35 acres of Lot 10	25	"	"	35	
53	S 5 acres of Lot 10	25	"	"	5	
54	N 31.44 acres of Lot 11	25	"	"	31	44
55	S 8.56 acres of Lot 11	25	"	"	8	56
56	Lot 12	25	"	"	13	56
57	N 100 acres of N E 4	27	"	"	100	
58	S 60 acres of N E 4	27	"	"	60	
59	N 20 acres of N E 4 of NW 4	27	"	"	20	

60 S 20 acres of NE 4 of NW 4	27	"	"	20
61 N 36.40 acres of NW4 of NW4	27	"	"	36 40
62 S 3.60 acres of NW4 of NW4	27	"	"	3 60
63 N 32.65 acres of SW4 of NW4	27	"	"	32 65
64 S 7.35 acres of SW4 of NW4	27	"	"	7 35
65 N 24.66 acres of SE4 of NW4	27	"	"	24 66
66 S 15.34 acres of SE 4 of NW4	27	"	"	15 34
67 N 57.20 acres of N2 of SW4	27	"	"	57 20
68 S 22.80 acres of N2 of SW4	27	"	"	22 80
69 N 26.73 acres of SW4 of SW4	27	"	"	26 73
70 S 13.27 acres of SW4 of SW4	27	"	"	13 27
71 N 21.43 acres of SE4 of SW4	27	"	"	21 43
72 S 18.57 acres of SE4 of SW4	27	"	"	18 57
73 W 2 of SE 4	27	"	"	80
74 N 34.83 acres of NE 4 of SE4	27	"	"	34 83
75 S 5.17 acres of NE4 of SE4	27	"	"	5 17

76 SE 4 of SE 4	27	"	"	40
77 NE4	29	"	"	160
78 N 2 of NW 4	29	"	"	80
79 S 2 of NW 4	29	"	"	80
80 N 2 of SW 4	29	"	"	80

Carried forward

4.589 17

[3158]

5 (In pencil)

(2-3-03-250)

RAILROAD LIST.

South of Base Line and East of Mount Diablo Principal Meri List of Selections made at Visalia, California, upon this Indemnity List No. 89.

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres	100
Brought forward					4589	17
81	N 54.84 acres of S 2 of SW 4	29	30S	23E	54	84
82	S 25.16 acres of S2 of SW 4	29	"	"	25	16
83	N 50 acres of W2 of SE4	29	"	"	50	
84	S 30 acres of W2 of SE4	29	"	"	30	
85	E 2 of SE 4	29	"	"	80	
86	N 2 of NE4	33	"	"	80	
87	N 33.05 acres of SW 4 of NE 4	33	"	"	33	05

88 S 6.95 acres of SW 4 of NE 4	33	"	"	6 95
89 N 38.62 acres of SE 4 of NE 4	33	"	"	38 62
90 S 1.38 acres of SE 4 of NE 4	33	"	"	138
91 NE4 of NW 4	33	"	"	40
92 N 33.11 acres of NW 4 NW 4	33	"	"	33 11
93 S 6.89 acres of NW 4 of NW 4	33	"	"	6 89
94 N 32.62 acres of SW 4 of NW 4	33	"	"	32 62
95 S 7.38 acres of SW 4 of NW 4	33	"	"	7 38
96 N 32.25 acres of SE 4 of NW 4	33	"	"	32 25
97 S 7.75 acres of SE 4 of NW 4	33	"	"	7 75
98 N 23.80 acres of NW 4 of SW 4	33	"	"	23 80
99 S 16.20 acres of NW 4 of SW 4	33	"	"	16 20
100 NE 4 of SW 4	33	"	"	40
101 S 2 of SW 4	33	"	"	80
102 SE 4	33	"	"	160
103 N 2	35	"	"	320
104 S 2	35	"	"	320

Total

6.109 17

[3159]

STATE OF CALIFORNIA

)

: SS:

CITY AND COUNTY OF SAN FRANCISCO)

I, CHARLES W. EBERLEIN, being duly sworn, depose and say: that I am the Acting Land Agent of the Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad Company (of California); that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, successor as aforesaid, as inuring to it to aid in the construction of the railroad of said Company from Lardo to Sumner for which a grant of lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserve lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles Indemnity Belt, on each side of the line of route for a continuous distance of twenty (20) miles, being for the sixth (6th) Section of said road, starting from a point in the N.E. 4 of Sec. 9, T. 28 S. R. 26 E. M.D.B. & M. and ending at a point in the N.E. 4 of Sec. 5, T. 30 S. R. 29 E. M.D.B. & M. and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

(Ink Hand Writing) *Charles W. Eberlein* (Seal)

Sworn to and subscribed before me, this 7th day

of November, 1903. Witness my hand and Notarial Seal.

(Notarial Seal) (Ink Hand Writing) *E. B. Ryan*

E. Black Ryan, Notary
Public, City and County
of San Francisco, Cal.

Eureka.

Notary Public in and
for the City and County
of San Francisco, in the
State of California.

* * * * *

(1022-03-100) Form 3308)

UNITED STATES LAND OFFICE,)

Visalia, Feb'y 26 1904)

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad (of California), under the grant to the said Southern Pacific Railroad Company (of California), by Acts of Congress, approved July 27, 1865, July 25, 1868, and June 28, 1870, above mentioned, and selected by Charles W. Eberlein, and duly authorized agent; and that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the ex-

terior ten (10) miles, Indemnity Belt, on each side; and that the same are not, nor is any part thereof, (erasure in red ink) claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Acts of Congress, approved July 1, 1864, and July 31, 1876, and contemplated by the circular of instructions dated November 7, 1879, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said Company has paid to the undersigned, the Receiver, the full sum of seventy-eight (\$78.00) dollars in full payment and discharge of said fees.

(Ink Hand writing) Geo. W. Stewart, (REGISTER.

(Ink Hand writing) A. H. Swain, RECEIVER.

[3160]

(9-10-01-200)

S C 34

SAN FRANCISCO, CAL., November 1903.

The Southern Pacific Railroad Company offers to pay under protest the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant of lands to it by Congress.

(Ink Hand Writing) (*Charles W. Eberlein*
Acting Land Agent,
Southern Pacific R. R. Co.

UNITED STATES SURVEYOR-GENERAL'S)
 OFFICE,)
 SAN FRANCISCO, CALIFORNIA)
190)

I,, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No....., dated, to the credit of the United States, showing that the sum of \$. has been deposited as cost of survey, and \$. for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, - - - - \$.

Office Work - - - \$.

Total - - - - \$.

IN WITNESS WHEREOF, I have
 hereunto set my hand and Official Seal.

.....
 Surveyor-General.

* * * * *

(10-22-03-100) Form 3304

STATE OF CALIFORNIA)
 CITY AND COUNTY OF SAN FRANCISCO) ss:

CHARLES W. EBERLEIN being duly sworn deposes and says that he is the Acting Land Agent of the Southern Pacific Railroad Company, that he has

caused the lands selected in said Company's List No. 89 to be carefully examined by the agents and employees of said Company as to their mineral or agricultural character, and that to the best of his knowledge and belief, none of the lands returned in said list are mineral lands.

(Ink Hand Writing) *Charles W. Eberlein*

Subscribed and sworn to before me this 7th day of November, 1903.

(Ink Hand Writing) *E. B. Ryan.*

(Notarial Seal) Notary Public in and for the
E. Black Ryan. City and County of San Fran-
Notary Public cisco, State of California.
City & County of
San Francisco, Cal.

Eureka. [3161]

UNITED STATES LAND OFFICE,

San Francisco, Cal., November 12th, 1903.

I hereby certify that I have carefully examined List No. 89 of lands selected by the Southern Pacific Railroad Company in the Visalia District, Indemnity Limits, Main Line, and I find that those lands, therein described, which fall within the San Francisco Land District, and for which said Company seeks to take indemnity, are within the 20-mile limits of the reservation for said Company in the San Francisco Land District; that said lands have been lost to said Company, and that it is entitled to indemnity therefor.

(Ink hand writing) *A. B. Hunt.*

[3162]

Register.

Plaintiff's Exhibit 12-N-L.L.

Department of the Interior
United States Land Office
Visalia, Calif., December 11, 1903.

Honorable Commissioner General Land Office,
Washington, D. C.

Sir:

November 4, 1903, the Southern Pacific Railroad Company presented in this office its list No. 89 for lands in T. 30 S., R. 23 E., M.D.M., and on 17th ultimo, the same was rejected on the grounds that the said township was suspended. Notice was served on C. W. Eberlein, Acting Land Agent of said Company on last-named date. We are this date in receipt of appeal from our rejection, and same is transmitted herewith together with papers in case and evidence of service of notice.

Very respectfully,

George W. Stewart,

[3163]

Register.

Plaintiff's Exhibit 12-O-L.L.

W.O.C. H.G.P.

DEPARTMENT OF THE INTERIOR

N.

E.C.F. General Land Office

Washington, D. C. February 20, 1904.

Address only the

Commissioner of the General
Land Office.

- - - - - o
Southern Pacific Railroad Company : Quasi Contest
- - - - - o 2555.

Register and Receiver,
Visalia, California.

Sirs:

November 14, 1903, the Southern Pacific Railroad Company presented to your office for filing its list No. 89 embracing 6109.17 acres in sections 15, 17, 19, 21, 23, 25, 27, 29, 33 and 35, T. 30 S., R. 23 E., M.D.M. You rejected said application to select on the ground that lands in said township were suspended from disposition under the agricultural land laws by telegram "P" of this office dated February 28, 1900. December 11, 1903, the railroad company filed an appeal from your said decision and on the same day you forwarded the record to this office for consideration. Your action in rejecting the application to select was correct, under conditions then existing, but by letters "N" of this office, dated February 11th and 20, 1904, the sections hereinbefore described were relieved from suspension. It would therefore appear that said application to select may now be granted, if no other objection thereto exists. Quasi Contest 2555 is accordingly hereby closed and selection list No. 89 herewith returned for appropriate action.

Very respectfully,

W. A. Richards,
Commissioner.

WPW 16-20 [3164]

(Endorsement)

5-404 50874

“N”

Dated Feb'y 20, 1904

Rec'd Feb'y 26, 1904

Register and Receiver
and S. P. R. R. Co.

Notes revocation of
suspension of
lands in T. 30 S., R. 23 E.
M.D.M., embraced in S.P.R.R.
List No. 89.

Noted on records. [3165]
Plaintiff's Exhibit 12-P - L.L.

Department of the Interior
United States Land Office.

Visalia, Calif., March 5, 1904.

Charles W. Eberlein,
Acting Land Agent S.P.R.R. Co.,
San Francisco, Calif.

Dear Sir:

I enclose herewith accepted indemnity list No. 89
for lands in T. 30 S., R. 23 E., M.D.M.

Hon. Commissioner's letter "N" of February 20,
1904, affirmed action of this office in rejecting said
location, but released land applied for from suspen-
sion and returned list for action of this office. Same

was accepted February 26, 1904, and has been noted on records of this office.

As part of the land applied for has been returned as mineral and all is in a township containing mining claims and within six miles of mining claims, it will be necessary to make publication of said list. This should be done at once.

Cery respectfully,

Geo. W. Stewart,
Register.

[3166]

(Plaintiff's Exhibit 12-Q -L.L.)

(In pencil 03151

UNITED STATES LAND OFFICE

Visalia, California

September 12, 1904.

List No. 89

LANDS SELECTED

BY THE

SOUTHERN PACIFIC RAILROAD COMPANY,

Indemnity Limits

Main Line

U. S. Land Office,

Visalia, Calif.

Received Sept. 6, 1904.

Accepted Sept. 12, 1904.

Geo. W. Stewart, Register.

(In pencil) Sent G.L.O. Sept. 14, 1904.

(9-14-95-500.)

Re-arranged in accordance with instructions in let-

ter "F", dated August 4th, 1904 from Acting Commissioner-General Land Office to Register and Receiver, Visalia, California.

Office of the SOUTHERN PACIFIC RAILROAD)
COMPANY,)
San Francisco, California.)

I, JOSEPH L. WILLCUTT, Secretary of the Southern PACIFIC RAILROAD COMPANY, do hereby certify that CHARLES W. EBERLEIN was appointed Acting Land Agent of the said Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad Company (of California), by the Board of Directors of said Company, at a meeting held on the second (2nd) day of September, 1903, and that since that time he has been continuously, and is now, the Acting Land Agent of the said Southern Pacific Railroad Company, successor as aforesaid.

IN TESTIMONY WHEREOF,
I have hereunto set my hand and
affixed the Corporate Seal of the said
Southern Pacific Railroad Com-
pany, the 31st day of August, A. D.
1904.

(SEAL) (Ink Hand Writing) Joseph L. Willcutt
SOUTHERN Secretary of the Southern Pacific
PACIFIC Railroad Company.
RAILROAD
COMPANY [3167]

(10-22-03-100) Form 3303

LIST OF LANDS
IN THE

Visalia Land District, California,
SELECTED BY THE
SOUTHERN PACIFIC RAILROAD COMPANY,
Successor by Consolidation to the Southern Pacific
Railroad Company (of California).

.
THE UNDERSIGNED, the duly authorized Acting Land Agent of the SOUTHERN PACIFIC RAILROAD COMPANY, successor by consolidation to the Southern Pacific Railroad Company (of California), under and by virtue of the Act of Congress, approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California", and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it as such successor and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the Rail-

road and Telegraph of said Company; being in part for the *sixth* (6th) section (*Twenty* (20) miles) of the same, commencing at *Lerdo* and ending at *Sumner* which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

(Ink Hand Writing) *Charles W. Eberlein*

Acting Land Agent of the Southern
Pacific Railroad Company. [3168]

S C 65 1

South of Base Line and East of Mount Diablo Principal Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

Part of Section	No. of Section	No. of Town	No. of Range	Area Acres		Remarks	No.
				100			
N. $\frac{1}{2}$	11	21	19	320	00		1
E $\frac{1}{2}$	7	22	19	320	00		2
Lot 10	31	23	23	36	90		3
Lot 5	17	24	24	36	00		4
Lot 8	3	23	19	39	78		5
S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	3	23	19	40	00		6
Lot 3	5	22	19	37	26		7
Lot 12	29	21	19	37	00		8
S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	3	23	19	40	00		9
S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	3	23	19	40	00		10

Lot 3	1	21	19	41 26	11
Lot 4	1	21	19	41 26	12
S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	1	21	19	40 00	13
S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	1	21	19	40 00	14
Lot 10	33	22	19	38 00	15
Lot 11	3	23	19	37 42	16
Lot 1	1	21	19	41 26	17
Lot 2	1	21	19	41 26	18
Lot 4	5	22	19	37 36	19
Lot 3	19	22	23	36 98	20
N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	27	21	19	40 00	21
S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	3	23	19	40 00	22
S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	1	21	19	40 00	23
S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	1	21	19	40 00	24
S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	21	22	19	40 00	25
Lot 13	21	21	19	40 30	26
N $\frac{1}{2}$	17	22	19	320 00	27
E $\frac{1}{2}$ of SW $\frac{1}{4}$	19	28	23	80 00	28
N E $\frac{1}{4}$ of S E $\frac{1}{4}$	33	22	19	40 00	29
N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	21	22	19	40 00	30
S.W. $\frac{1}{4}$	1	21	19	160 00	31
S.W. $\frac{1}{4}$	11	21	19	160 00	32
S $\frac{1}{2}$ of N.W. $\frac{1}{4}$	5	22	19	80 00	33
N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	19	28	23	40 00	34
S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	19	28	23	40 00	35
S. $\frac{1}{2}$ of N.E. $\frac{1}{4}$	5	22	19	80 00	36
W $\frac{1}{2}$ of S.E. $\frac{1}{4}$	1	21	19	80 00	37
S.E. $\frac{1}{4}$	19	28	23	160 00	38
Lot 3	19	23	22	13 10	39
N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	9	22	19	40 00	40

Carried forward

2915 14

[3169]

South of Base Line and East of Mount Diablo Principal Meridian. Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

Part of Section	No. of Section	No. of Town	No. of Range	Area Acres		Remarks No.
				100		
Brought forward				2915	14	
N E $\frac{1}{4}$ of S.E. $\frac{1}{4}$	17	22	19	40 00		41
N.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	17	22	19	40 00		42
S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	17	22	19	40 00		43
Lot 2	19	23	22	13 19		44
S $\frac{1}{2}$	5	22	19	320 00		45
N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	33	22	19	40 00		46
S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	27	21	19	40 00		47
Lot 2	33	21	19	13 78		48
N.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	21	21	19	40 00		49
S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	21	21	19	40 00		50
Lot 5	7	23	22	12 74		51
N.E. $\frac{1}{4}$	33	22	19	160 00		52
N.E. $\frac{1}{4}$	19	28	23	160 00		53
N.E. $\frac{1}{4}$	7	24	16	160		54
Lot 1	7	24	16	80 00		55
S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	7	24	16	40 00		56
N $\frac{1}{2}$ of Lot 10	7	24	16	40 00		57
W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	31	9	4	80 00		58
W. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	31	9	4	80 00		59
S. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	31	5	4	80 00		60

S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	15	10	6	80	00	61
Lot 6	31	5	4	80	00	62
E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	7	6	3	80	00	63
N. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	31	5	4	80	00	64
W. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	33	7	5	80	00	65
W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	33	7	5	80	00	66
N.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	7	24	16	40	00	67
N.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	7	24	16	40	00	68
S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	23	14	2	40	00	69
W. $\frac{1}{2}$ of Lot 7	1	24	16	40	00	70
Lot 8	1	24	16	80	00	71
N.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	19	24	16	40	00	72
S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	3	14	4	40	00	73
Lot 7	31	5	4	80	00	74
Lot 8	7	24	16	80	00	75
Lot 9	7	24	16	80	00	76
All that part in Rancho	33	11	1	275	20	77
Lot 8	7	22	19	45	82	
S. $\frac{1}{2}$	1	6	2	320	00	78

Total

6115 87

[3170]

1. (2-3-03-250.)

RAILROAD LIST

South of Base Line and East of Mount Diablo Principal Meri List of Selections made at Visalia, California, upon this Indemnity List No. 89.

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres	100
1	N. $\frac{1}{2}$	15	30	23	320	00
2	S. $\frac{1}{2}$	15	30	23	320	00

3 Lot 1	17	30	23	36 92
4 Lot 2	17	30	23	35 63
5 Lot 3	17	30	23	39 19
6 Lot 4	17	30	23	40 00
7 Lot 7	17	"	"	35 74
8 Lot 8	17	"	"	36 24
9 Lot 9	17	"	"	40 84
10 Lot 10	17	"	"	40 00
11 Lot 5	17	"	"	40 00
12 Lot 6	17	"	"	39 93
13 Lot 11	17	"	"	40 00
14 Lot 12	17	"	"	40 00
15 Lot 3	19	"	"	37 44
16 Lot 4	19	"	"	37 44
17 Lot 5	19	"	"	41 14
18 Lot 6	19	"	"	41 14
19 Lot 9	19	"	"	35 83
20 Lot 10	19	"	"	36 24
21 Lot 11	19	"	"	40 45
22 Lot 12	19	"	"	40 00
23 Lot 7	19	"	"	40 54
24 Lot 8	19	"	"	40 58
25 Lot 13	19	"	"	40 23
26 Lot 14	19	"	"	40 23
27 N. $\frac{1}{2}$	21	"	"	320 00
28 N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	21	"	"	80 00
29 S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	21	"	"	40 00
30 S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	21	"	"	40 00
31 S.E. $\frac{1}{4}$	21	"	"	160 00
32 N.E. $\frac{1}{4}$	23	"	"	160 00
33 N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	23	"	"	80 00

34 S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	23	"	"	40 00
35 S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	23	"	"	40 00
36 N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	23	"	"	80 00
37 S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	23	"	"	80 00
38 S.W. $\frac{1}{4}$	23	"	"	160 00
39 Lot 1	25	"	"	13 10
40 Lot 2	25	"	"	40 00

Carried forward

2908 95

[3171]

2 (2-3-03-250)

RAILROAD LIST

South of Base Line and East of Mount Diablo Principal
Mer List of Selections made at Visalia, California,
upon this Indemnity List No. 89.

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area Acres	100
Brought forward					2908 95	
41 Lot 3		25	30	23	40 00	
42 Lot 4		25	"	"	40 00	
43 Lot 5		25	"	"	40 00	
44 Lot 6		25	"	"	13 25	
45 W. $\frac{1}{2}$		25	"	"	320 00	
46 Lot 9		25	"	"	40 00	
47 Lot 8		25	"	"	40 00	
48 Lot 7		25	"	"	13 41	
49 Lot 10		25	"	"	40 00	
50 Lot 11		25	"	"	40 00	

51 Lot 12	25	"	"	13 56
52 N.E. $\frac{1}{4}$	27	"	"	160 00
53 N.W. $\frac{1}{4}$	27	"	"	160 00
54 S.W. $\frac{1}{4}$	27	"	"	160 00
55 W. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	27	"	"	80 00
56 N.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	27	"	"	40 00
57 S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	27	"	"	40 00
58 E. $\frac{1}{2}$ of N.E. $\frac{1}{4}$	29	"	"	80 00
59 W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$	29	"	"	80 00
60 N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	29	"	"	80 00
61 S. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	29	"	"	80 00
62 N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	29	"	"	80 00
63 S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	29	"	"	80 00
64 W. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	29	"	"	80 00
65 E. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	29	"	"	80 00
66 N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$	33	"	"	80 00
67 S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	33	"	"	40 00
68 S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	33	"	"	40 00
69 N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	33	"	"	40 00
70 N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	33	"	"	40 00
71 S. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	33	"	"	80 00
72 N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	33	"	"	40 00
73 N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	33	"	"	40 00
74 S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	33	"	"	80 00
75 N. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	33	"	"	80 00
76 S. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	33	"	"	80 00
77 N. $\frac{1}{2}$	35	"	"	320 00
78 S. $\frac{1}{2}$	35	"	"	320 00

Total

6109 17

[3172]

STATE OF CALIFORNIA,)
CITY AND COUNTY OF SAN FRANCISCO) SS:

I, CHARLES W. EBERLEIN, being duly sworn, depose and say: that I am the Acting Land Agent of the Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad Company (of California); that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, successor as aforesaid, as inuring to it to aid in the construction of the railroad of said Company from Lerdo to Sumner for which a grant of lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles Indemnity Belt, on each side of the line of route for a continuous distance of Twenty (20) miles, being for the Sixth (6th) section of said road, starting from a point in N.E. $\frac{1}{4}$ of Sec. 9 T. 28 S. R. 26 E. M.D.B. & M. and ending at a point in N.E. $\frac{1}{4}$ of Sec. 5 T. 30 S. R. 29 E. M.D.B. & M. and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

(Ink Hand Writing) *Charles W. Eberlein.* (Seal)

Sworn to and subscribed before me, this thirty-first

(31st) day of August, 1904. Witness my hand and
Notarial Seal.

(Ink Hand Writing) *E. B. Ryan*

(Seal) Notary Public in and for the City
E. Black Ryan, and County of San Francisco, in
Notary Public. the State of California.

Eureka.

* * * * *

(10-22-03-100) Form 3308

UNITED STATES LAND OFFICE.)

Visalia, Cal., September 12, 1904.)

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, successor by consolidated to the Southern Pacific Railroad Company (of California), under the grant to the said Southern Pacific Railroad Company (of California), by Acts of Congress, approved July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by CHARLES W. EBERLEIN, the duly authorized agent; and that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, Indemnity Belt, on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, or claimed as swamp lands; nor is there

any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Acts of Congress, approved July 1, 1864, and July 31, 1876, and contemplated by the circular of instructions dated November 7, 1879, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said Company has [3173] paid to the undersigned, the Receiver, the full sum of Seventy eight (\$78.00) dollars in full payment and discharge of said fees.

(Ink Hand Writing) Geo. W. Stewart, REGISTER.

(Ink Hand Writing) A. H. Swain, RECEIVER.

* * * * *

(9-10-01-200)

S C 34

SAN FRANCISCO, CAL., August 31st, 1904.

The Southern Pacific Railroad Company offers to pay under protest the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant of lands to it by Congress.

(Ink Hand Writing), *Charles W. Eberlein*, Acting
Land Agent, Southern Pacific R. R. Co.

UNITED STATES SURVEYOR-GENERAL'S)
OFFICE,)
San Francisco, California.)
.....190 .)

I,....., Surveyor-General for the
United States, in and for the State of California,

hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit No....., dated, to the credit of the United States, showing that the sum of \$.....has been deposited as cost of survey, and \$.....for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey - - - - - \$.....

Office work, - - \$.....

Total - - - - - \$.....

IN WITNESS WHEREOF, I have
hereunto set my hand and official Seal.

.....

Surveyor-General.

* * * * *

(10-22-03-100) Form 3304

State of California)

City and County of San Francisco.) SS:

CHARLES W. EBERLEIN, being duly sworn deposes and says that he is the Acting Land Agent of the Southern Pacific Railroad Company, that he has caused the lands selected in said Company's List No. 89 to be carefully examined by the agents and employees of said Company as to their mineral or agricultural character, and that to the best of his knowledge and belief, none of the lands returned in said list are mineral lands.

(Ink Handwriting) *Charles W. Eberlein.*

(Notarial Seal) Subscribed and sworn to before
E. Black Ryan me this 31st day of August, 1904.
Notary Public
City and County (Ink Handwriting) *E. B. Ryan*
of San Francisco Notary Public in and for the City
Cal. and County of San Francisco,
State of California.

Eureka. [3174]

UNITED STATES LAND OFFICE,

San Francisco, Cal., September 2nd, 1904.

I hereby certify that I have carefully examined List No. 89 of lands selected by the Southern Pacific Railroad Company in the Visalia District, Indemnity Limits, Main Line, and I find that those lands, therein described, which fall within the San Francisco Land District, and for which said Company seeks to take indemnity, are within the 20-mile limits of the reservation for said county in the San Francisco Land District; that said lands have been lost to said Company, and that it is entitled to indemnity therefor.

Ink Hand Writing) *A. B. Hunt*
Register.

[3175]

(Plaintiff's Exhibit 12-R - L.L.)

Department of the Interior

United States Land Office

Visalia, Cal., July 14, 1904.

Hon. Commissioner General Land Office,

Washington, D. C.

Sir:

Your letter "N" of February 20, 1904, returned for

acceptance selection list No. 89 of the Southern Pacific Company. Said list was accepted February 26, 1904. As the land embraced therein is in the vicinity of mining claims we required said company to have publication of same made. We have received proof of publication and payment of costs thereof and non-mineral affidavit. Said papers and Register's certificate of posting notice in office are transmitted herewith.

No contests, protests or objections have been filed in this office.

Very respectfully,

Geo. W. Stewart,

Register.

[3176]

(Plaintiff's Exhibit 12-S - L.L.)

1904-129481-133256

SSM

"F" DEPARTMENT OF THE INTERIOR F.C.D.
F.I.W.

GENERAL LAND OFFICE,

WASHINGTON, D. C., August 4, 1904

Address only the

Commissioner of the General Land Office.

Register & Receiver,

Visalia, California.

Sirs:

By letter dated July 14, 1904, you forwarded the Southern Pacific Railroad Company's Indemnity List No. 89, of selections made on account of its main line grant.

Under date of July 25, 1904, the resident attorney

for the company called attention to certain mistakes in the designation of lost land in the above list, the mistakes arising either from the fact that the lost land described had been previously used, or from the fact that they are within the indemnity limits of the grant, and he asked permission to substitute proper losses in said cases.

A cursory examination of said list shows that it does not conform to the regulations governing railroad selections, the tracts selected being divided to conform to the area of the particular tracts assigned as the basis of the selection, without regard to legal sub-divisions. For example, the "North 275.20 acres of the W 1/2", Sec. 25, T. 30 S., R. 23 E., is selected in lieu of the portion of a certain Rancho located in an odd-numbered section, area 275.20 acres, the remainder of the west half of said Sec. 25, 44.80 acres, being selected elsewhere to said list in lieu of another loss equalling that amount.

Such selections will not be permitted. Said list No. 89 is herewith enclosed, and you will return the same to the company in [3177] order that a new list may be filed, properly describing the lands selected by legal subdivisions, and the errors in the bases assigned can at the same time be corrected.

Very respectfully,

J. H. Fimple

Acting Commissioner.

R.C.M. [3178]

(Plaintiff's Exhibit 12-T - L.L.)

4-485

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE

Visalia, Calif.,
August 10, 1904.

Charles W. Eberlein,
San Francisco, Cal.

Sir:

In reference to S.P.R.R.Co's Indemnity List No. 89 you are advised that under date of August 4, 1904, the Acting Commissioner of the General Land Office by reason of defective basis, being with regard to legal sub-divisions, returns said list to be delivered to you, that a new list may be filed properly describing lands selected by legal sub-divisions, and correctly assigning bases.

Sixty days from notice are allowed within which to comply with the requirements of the Commissioner, or to appeal from his decision to the Honorable Secretary of the Interior, and upon your failure to take action within the time specified the case will be reported appropriate action. A copy of the decision is inclosed.

Very respectfully,

Geo. W. Stewart,

Register.

(Plaintiff's Exhibit 12-U - L.L.)

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE

Visalia, Cal., September 6, 1904.

(Place)

(Date)

Charles W. Eberlein, Esq.,
San Francisco, Cal.

Dear Sir:

In the matter of S.P.R.R.Co's list No. 89, received this date, will state that after reading the Acting Commissioner's letter I am of the opinion that the fees should be paid. I think there is no doubt that one payment is enough; that is, that the amount of one payment is all that would be retained by the Government. But as the Acting Commissioner's letter states that "Such selections (as the original No. 89) will not be permitted," and requires "that a *new list* be filed", it would appear that the payment of the usual fee will be necessary to make the selection perfect.

In the case of certain homestead entries that have been disallowed for various reasons, on the presentation of new applications by same party we have required the payment of the usual fees and commissions, and the applicants thereafter made application for the repayment of the sum paid on the former entry.

In the case before us an *amended* selection was not called for, and no time was given for complying with the Commissioner's requirements; and it was proba-

bly an error on the part of this office to have allowed you sixty days; It was treated by the G. L. O. as a matter optional with your Company.

In matter of original No. 89 the Commissioner does not mention the payment of fees, and as he declined to accept the selection, I am rather of the opinion that our acceptance of fees before would be considered an error, and that they are subject to repayment on application.

Should the List be forwarded to the G. L. O. without the fees, and payment be called for by the Commissioner later, then, should an application (complete in every way) be made for any of the land described in the List, in the mean time, the selection might be defeated as to the tract thus brought in conflict.

I am of the opinion that the present *new List* should be made complete by the payment of the usual fees.

Very respectfully,

Geo. W. Stewart, Register.

[3180]

(Plaintiff's Exhibit 12-V - L.L.)

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE

Visalia, Cal., September 14, 1904.

(Place)

(Date)

Charles W. Eberlein, Esq.,
San Francisco, Cal.,

Dear Sir:

Enclosed herewith are returned three copies of new

List No. 89, also Receiver's receipt for payment of fees therefor. Same is reported G.L.O. this date.

Very respectfully,

Geo. W. Stewart,

Register.

[3181]

(Plaintiff's Exhibit 12-W - L.L.)

DEPARTMENT OF THE INTERIOR

UNITED STATES LAND OFFICE

Visalia, Cal., September 14, 1904.

(Place)

(Date)

Hon. Commissioner General Land Office,

Washington, D. C.,

Sir :

I transmit herewith S.P.R.R.Co.'s new List No. 89. Your letter "F" of August 4, 1904, declined to accept original List No. 89, and returned same to this office, which was returned to the Land Agent of said Company with copy of said letter on August 10, 1904, as per evidence attached hereto. Said new List was accepted by this office on the 12th instant.

Very respectfully,

Geo. W. Stewart,

Register.

[3182]

DEPARTMENT OF THE INTERIOR

340517 GENERAL LAND OFFICE

"B" WASHINGTON, D. C.

(in ink)

Jul 16 1913

CRGO

I hereby certify that the annexed copies of papers

SOUTHERN PACIFIC CO.

(Rubber stamp)

Jul 28 1913

LAW DEPARTMENT

are true and literal exemplifications from the originals in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(SEAL)

UNITED STATES GENERAL

LAND OFFICE.

C. M. Bruce

Assistant Commissioner of the General Land Office.

- - - - -

AFFIDAVIT OF PUBLICATION.

340517 - 1 C

State of California) ss.

County of Kern)

C. L. McGee, being first duly sworn, deposes and says: I am over the age of twenty-one years and am now and have been during all of the times herein mentioned the chief clerk of the Echo Publishing Company, and as such chief clerk I have at all the times herein mentioned had control and management of all the advertisements that have appeared during said time in The Morning Echo; that The Morning Echo is a newspaper published daily (except Monday) in the city of Bakersfield, County of Kern, State

of California, by The Echo Publishing Company; that said paper is published for the dissemination of local and telegraphic news and intelligence of a general character and has a bona fide subscription list of paying subscribers. Said newspaper has been established and published in the said City, County and State for more than one year last past; said paper is not devoted to the interest nor published for the entertainment of any particular class, profession, trade or calling, race or denomination, or any number thereof; that a notice of which the annexed printed slip is a [3183] true copy was published in said paper in each and every issue thereof on the following dates, to-wit: April 14-15-16-17-19-20-21-22-23-24-26-27-28-29-30. May 1-3-4-5-6-7-8-10-11-12-13-14-15-17-18-19-20-21-22-24-25-26-27-28-29-31. June 1-2-3-4-5-7-8-9-10-11-12-14, 1904, and was published on each of said dates in the full and entire issue of said paper and in the newspaper proper and not at any time in a supplement thereto.

C. L. McGee.

Subscribed and sworn to before me, this 14th day of June, 1904

S. C. Smith,

Notary Public in and for the County of Kern, State of California.

(ANNEXED PRINTED SLIP)

Notice.

United States Land Office, Visalia, California, April 14, 1904.

To whom it may concern:

Notice is hereby given that the Southern Pacific

Railroad Company has filed in this office a list of lands situated in the township described below, and has applied for a patent for said lands; that the list is open to the public for inspection, and a copy thereof by descriptive subdivisions has been posted in a convenient place in this office, for the inspection of all persons interested and of the public generally.

Within the next sixty days following the date of this notice, protests or contests against the claim of the Company to any tract or subdivision within any section or part of section described in the list, on the ground that the same is more valuable for mineral than for agricultural purposes, will be received and noted for report to the General Land Office at Washington, D.C.

GEO. T. STEWART, Register.

A. H. SWAIN, Receiver.

“A”

Southern Pacific Railroad Lands. Visalia Land District. California. South Township 30. East Range 23. All of Sec. 15.

NE 1/4 and S 1/2 of Sec. 17.

NE 1/4 and S 1/2 Sec. 19.

All of sections 21, 23, 25, 27, 29, 33 and 35.

CERTIFICATE AS TO POSTING OF NOTICE

DEPARTMENT OF THE INTERIOR

United States Land Office

At Visalia, Calif.

June 29, 1904.

I, Geo. W. Stewart, Register, do hereby certify

that a notice, a printed copy of which is attached to the Affidavit of Publication herein, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 14th day of April, 1904, and remained posted to date hereof.

Geo. W. Stewart,
Register.

[3184]

340517 --3C

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE.

Visalia, Cal., July 14, 1904.

Hon. Commissioner General Land Office,
Washington, D. C.

Sir:

Your letter "N" of February 20, 1904, returned for acceptance selection list No. 89 of the Southern Pacific Company. Said list was accepted February 26, 1904. As the land embraced therein is in the vicinity of mining claims we required said Company to have publication of said made. We have received proof of publication and payment of costs thereof and non-mineral affidavit. Said papers and Register's certificate of posting notice in office are transmitted herewith.

No contests, protests or objections have been filed in this office.

Very respectfully,
Geo. W. Stewart,
Register.

- - - - -

34/59

129481

UNITED STATES LAND OFFICE,

Visalia, Cal., July 14, 1904.

Register transmits S. R. R. Co's selection list
No. 89 *case*

in.

July 21/04 Refd to Div F. E. (illegible)

H. G. P.

Involving the. ,
Cos files

No ans. recd of Sec.

Tp. R. F. W. (illegible).

Reference is had to letter. "N" of (Ect) . .

of Feby 20 1905 56

—
39

Copies to W. N. Mills, June 17 and 28, 1912.

(Some writing illegible)

Aug 4, 1904 To R. & R. returning list 89
with instructions. D. A. Chambers ad-
vised Wood

340517 — 4 C [3185]

340517 DEPARTMENT OF THE INTERIOR

"B" GENERAL LAND OFFICE.

WASHINGTON, D. C.

(in ink)

CRGO

I hereby certify that the annexed copies of papers are

SOUTHERN PACIFIC CO.

(Rubber stamp) JUL 28 1913

LAW DEPARTMENT.

true and literal exemplifications from the originals
in this office.

IN TESTIMONY WHEREOF I have hereunto sub-
scribed my name and caused the seal
of this office to be affixed, at the City
of Washington, on the day and year
(SEAL) above written.

UNITED STATES

GENERAL LAND OFFICE

C. M. Bruce

Assistant Commissioner of the General Land Office.

DEPARTMENT OF THE INTE-
RIOR

United States Land Office

Visalia, Calif., December 11, 1903.

Honorable Commissioner General Land Office,
Washington, D. C.

Sir:

November 14, 1903, the Southern Pacific Railroad
Company presented in this office its list No. 89 for
lands in T. 30 S., R. 23 E., M.D.M., and on 17th ultimo
the same was rejected on the grounds that the said
township was suspended. Notice was served on C.
W. Eberlein, Acting Land Agent of said Company
on last-named date. We are this date in receipt of
appeal from our rejection, and same is transmitted

3864 *The Southern Pacific Co. et al. vs.*

herewith together with papers in case and evidence
of service of notice.

Very respectfully,

Geo. W. Stewart

Register.

Card with list to Div. C Dec. 21/1903

W 15 - 14125

Quasi 2555

45/57

211143

2 Enc. Recd. (illegible)

UNITED STATES LAND OFFICE.

Visalia, Calif.

Dec. 11, 1903.

Register transmits appeal

of S. P. R. R. Co. from rejection
of List No. 89 for land in suspended

T 30 S. R 23 E. M. D. M.

340517 - 2 A

15 - 14125

Involving the

Feby 14/04. Refd to Div. "N" (illegible)

Chf. Div.

tp. R.

Ref to Div. F. Dec 19, 1903 67-43

A.B.W.

54

Wood

215

(Some writing illegible) [3186]

340517 —3 A

United States Land Office
Visalia, California.

In Re Southern Pacific Rail-)
road Co's List No. 89, selecting)
indemnity Lands of its Main)
Line grant; being parts of odd-)
numbered sections in Township) *Notice of Appeal.*
30 South, Range 23 East,)
Mount Diablo Base and Merid-)
ian.)

To the Register and Receiver:

You will please take notice that the Southern Pacific Railroad Company appeals to the Commissioner of the General Land Office from your decision rendered on November 17th, 1903, rejecting the above-entitled list.

The list is in regular form, and the requisite fees were tendered, with presentation of the list for filing. The lands selected are vacant and unappropriated non-mineral lands, parts of odd-sections within indemnity limits of appellant's grant; nor is there any question about the sufficiency of the lieu bases used. The list was refused filing on the sole ground that "said township is suspended". In other words, the list would have been filed and approved but for an order of the Commissioner, made by telegram dated February 28th, 1900, to "suspend from disposition until further orders", the township containing these lands.

This appeal is based on the following grounds:

1. The Commissioner is without lawful authority to defeat, or by indefinite suspension of the lands injuriously delay, the operation of the Act of Congress of July 27th 1866 (14 Stat. 292) granting unto appellant the right to select those lands. The suspension order has now been in force nearly four years. If the Commissioner can lawfully suspend these lands for four years from selection by appellant, it would seem to follow that he may thus for all time suspend all lands from such selection. It is respectfully submitted that while the Commissioner may, in case of emergency, temporarily suspend particular lands to prevent fraudulent entry thereof, and the like, he is without lawful right to (particularly on ex parte representations), suspend for a longer time than is necessary to bring on a hearing, lands which but for such suspension appellant is entitled to select.

2. The Commissioner's order is that these lands be suspended "from disposition"; and the Register and Receiver erred in construing this to be an order forbidding indemnity selection thereof by appellant. The filing of this list would not have been a "disposition" of the land. If the lands are mineral in character, or any reason exists why they should not be patented to appellant, the facts can be ascertained as well after as before filing the list; hence, as beforesaid, the filing of the list would, in no sense, have been a "disposition" of the land.

It is most respectfully asked that the Register and

Receiver be directed to file this list as of the date it was presented.

Wm. Singer, Jr.,
Attorney for Appellant.

Wm. F. Herrin,
Counsel for Appellant.

(Side notation) 340517 - 4 A
No.....

U. S. LAND OFFICE. [3187]

Visalia, Cala.
In Re S. P. R. R. Co's
List No. 89, selecting In-
demnity Land of its Main
Line Grant.

340517 - 5 A
Notice of Appeal.
Filed December 11, 1903

.
Geo. W. Stewart
. Register.

WM. SINGER, JR.,
Rooms 61-2, Union Trust Building,
San Francisco, Cal.
Atty for S. P. R. R. Co. [3188]

.
Special Service
Division. DEPARTMENT OF THE
INTERIOR,
General Land Office.

Address only the
Commissioner of the General Land Office.

Bakersfield, Cal., July 13th, 1900.

Hon. Commissioner,

General Land Office, Exhibit No. 1 mentioned
Washington, D. C. in this letter is map 89 —
California filed in Div. L.

Sir:

In compliance with your instructions, see letter "P", W. E. V., Dec. 19, 1899, directing me to investigate and report upon the mineral or non-mineral character of certain lands located in "Townships 15, 16 and 17 S. Ranges 10, 11, 12 and 13 E., M.D.M., Township 27 S. Ranges 27, 28, 29 and 30 E., M.D.M., Township 30 S. Ranges 21 and 22 E., M.D.M., Township 31 S., Range 22 E., M.D.M. and Township 11 N., Range 23 W., S.B.M., California, which are alleged to be oil lands (mineral)."

I have the honor to report as follows:— Immediately after entering upon this investigation, I was confronted with indisputable facts that warrant me in stating that the lands in question, and very much of the contiguous country, *are valuable only for their mineral worth*; there are no agricultural lands in any part of the suspended district; the mineral possibilities are something wonderful, and I make the prediction that this will soon be the largest oil field in the United States, if not in the world. I have visited all of the territory that stands suspended, and I find no people engaged in farming, cattle raising, or sheep herding, in all this vast area of land; for the simple

reason that it produces nothing that will sustain man or beast; it is essentially mineral land, and from the present outlook, will soon be a great source of wealth to the State, quite likely the revenue that will be obtained from these well known oil fields will exceed all other mineral products of the state, within a very few years. One is filled with amazement to witness the amount of development work that has been accomplished already, and the oil industry here in southern California is but a year old. These vast oil fields represent millions upon millions of dollars, and settle the fuel question of the Pacific Coast for generations to come.

I mail you a most excellent map of the country where these lands are located; the red lines are the exterior bounds of the lands that are held in suspension, and I cannot recommend too strongly, the propriety of reclassifying same. Doubtless, here and there, parts of a Township might be set back again in the agricultural list, but if not done, the agriculturist will not suffer; there are positively no lands in all this large list that would bring five cents an acre, for farming or grazing purposes. But for mineral purposes, these same worthless lands have risen in one short year to a valuation of \$1,500 per acre in many instances, and it is a rare thing to hear any of the known oil lands offered at less than \$1,000 per acre.

I will mark the above map Exhibit No. 1, as it will necessarily play an important part in connection

with the many reports that will be forwarded to the department.

I also forward Exhibit No. 2; this is an album of photographic views that were taken under my personal direction, and represent different portions of the oil fields under consideration; they tell their own story in plainer and more eloquent [3189] terms than I can. I searched in vain for an opportunity to photograph the improvements of some of the many homestead entries that have been recently filed on these valuable mineral lands.

The fact is, every Homestead entry, or lieu selection made under the act of June 4, 1897 (30 Stat., 36), during the past year, on any of the lands now under investigation, have been fraudulently made; they were taken for their mineral worth. There are no agricultural improvements on any one of these fraudulent entries, but we find Derricks and Oil Wells, everywhere; oil tanks in countless numbers filled to overflowing, and in many instances oil being pumped into holes dug in the ground, for the want of transportation facilities; scores of eight, ten and twelve mule teams constantly on the go to the different depots with their precious loads of oil, the same to be shipped to all parts of the country, dozens and dozens of individuals constantly arriving from various portions of the world for the purpose of engaging in the oil industry in some form or another; scores of miners, mechanics and laborers constantly arriving, and are immediately set to work at magnificent wages; train loads of mining machinery ar-

living at each of the Railroad depots, daily; lands that one year ago would not command \$1.00 per acre, readily selling at this time as high as \$1,500 per acre, and even higher; these, are among some of the reasons that induce me to declare to the Hon. Commissioner that the lands under consideration are MINERAL, pure and simple. I will make reports on 4-480 in all cases that come within the proper scope of such form. Said reports will prove conclusively that the lands under consideration are mineral.

As to the character of minerals that prevail in the tracts covered by your suspension, I will state that the following constitute the prevailing minerals to be found in paying quantities within the borders of the said lands, viz:— crude petroleum oil, asphalt, sulphur, fullers- earth, and gypsum; the first and last in fabulous quantities, asphalt in great abundance, and fullers earth in sufficient quantity to build strong hopes for its becoming a paying industry in the near future.

I have spent much time in collecting facts and figures regarding the cost of development work, already accomplished in the oil fields in this locality. It has been necessary for me to consult with or correspond with over two hundred and fifty different Corporations, that are actively engaged in some form or another, in the development of crude petroleum oil in various portions of the suspended lands under investigation. I have received replies from about one half of the number, and promises from many who are not yet ready to report.

The earnestness and good faith of those actively engaged in developing and producing oil in the Kern River Oil District will not be questioned; it is safe to say that \$1,500,000 has been spent in development work by these fearless and honest miners. This vast expenditure has been spent in producing crude petroleum oil, principally in Townships 27, 28 and 29 S., Ranges 27, 28 and 29 E., M. D. M. This territory is now producing large quantities of oil, and shipping to the full extent that the operators can secure transportation facilities; every barrel has to be hauled from six to seven miles, by wagon; this is a tedious and slow means of transportation; the S. P. Co. are now building a branch line into the oil field, which will be completed within 20 days, and it is claimed that the oil output in this field will soon reach 5000 barrels per day, with a prospect of 10,000 per day within a years time. Oil is quoted at \$1.00 per barrel f.o.b., at this point; one days income, viz:— \$5,000 is more than the entire belt of suspended lands in the Kern River Oil District would command, under the most promising circumstances that it [3190] would be possible to invent, as an agricultural proposition.

I desire to call the attention of the Hon. Commissioner to the following fact; the City of Bakersfield is one of the oldest settled localities that there is in southern California. For many years, the County of Kern, in which these suspended lands are located, has been known as a cattle and sheep country; now mark this fact, notwithstanding that the principal revenue of the County was obtained from cattle and

sheep husbandry, these lands that are now in dispute lay but from four to six and seven miles from said Bakersfield; had they been of any worth as an agricultural proposition, it stands to reason that every acre of the same would most naturally have been homesteaded long ago; but, within one short year, every acre of this heretofore worthless land, has become of agricultural worth, and especially to those who are engaged in the furnishing of Forest Reserve Scrip for speculative purposes. And not one acre of this land has been taken except for the oil it has been demonstrated that it contains, and that in fabulous richness.

I desire to call the attention of the Hon. Commissioner to a class of mineral filings that are working almost as great an injury to this and other oil fields, as are the so called scrippers; numerous cases exist where combinations have been formed for the purpose of controlling vast areas of the public domain, ostensibly, under the United States laws that govern mineral filings on the public domain. In so far as I have been able to learn the facts of the case, without making an abstract of the lands that are thus held down by the combinations referred to above, said parties have placed mineral filings upon more than 250,000 acres of the public domain, in the counties of Kern and Fresno, alone. In order that the parties engaged in scripping the lands that are now known to be unmistakably mineral might have an argument in their favor, they caused to be made a complete and accurate list of said filings. They are attested, un-

der oath, and I assume that they are practically correct. This sworn statement shows that in Kern County alone, within a year 103 persons have located 8,248 placer petroleum mining claims of twenty acres each, an average of over eighty claims of 1,600 acres to the person, or a total of 164,960 acres.

The statement from Fresno County makes a similar showing covering the time between January 1, 1899, and March 1, 1900., 97 persons have located 5,983 placer petroleum claims of twenty acres each, an average of over sixty claims; 1,200 acres to the person, or a total of 119,660 acres.

The parties making these numerous filings, have made no sort of improvement or development; they would seem to be purely speculative in character, and many of them are patrolled, and otherwise held by force.

I have accumulated a mass of documentary evidence that goes to prove as conclusively as it is possible to do under existing circumstances, that quite all of the territory that you have suspended in connection with the oil lands of the San Joaquin Valley, California are mineral (oil). I am waiting on Mr. E. E. Bush of Hanford, Cal., and J. B. Treadwell, of San Francisco, for valuable reports that they are preparing, as experts, for the use of the Hon. Commissioner in connection with the matter in hand; I am promised said reports in a very few days, and will immediately forward the same with other documents to the Department. The affidavits that I have secured are connected with cases that will be immedi-

ately reported on form 4-480, and the same affidavits will be used in a large number of cases. I herewith present the names of upwards of forty good and true representative men of California, who have given me permission to use their names in [3191] any court, at any time, as witnesses to prove that the lands under suspension are mineral:— E. E. Bush, Hanford, Cal., C. H. Congdon, Bakersfield, Cal., W. E. De Groot, Los Angeles, Cal., C. A. Canfield, Los Angeles, Cal., Milton McWhorter, Bakersfield, Cal.; W. H. Shafer, Selma, Cal., Timothy Spellacy, Bakersfield; J. J. Mack, Bakersfield; also of the same place, Jno. P. Kerr, W. M. Spencer, H. P. Bender, J. M. Keith, Walter James, J. M. Jameson, H. W. McCray, T. L. Reed, and Alvin Fay; also J. A. Stroude, Oakland, T. P. Spiers, San Jose, W. E. Knowles, Oakland, C. A. Fuller, Oakland, Maurice V. Samuels, San Francisco, W. T. Sesnon, Geo. L. Hoxie, Fresno, Hanford, W. S. Badger, Fresno, W. F. Chandler, Selma, J. B. Treadwell, San Francisco, W. F. Sesnon, San Francisco, H. H. Blood, San Francisco, E. L. Doheney, W. P. Book, and Jos. A. Chanselor, of Los Angeles; A. B. Butler, Fresno, I. W. Ross, San Francisco, G. V. Sessions, Sacramento, and Chas. S. Young, of San Francisco, all of California. Each and every one of these gentlemen are calculated to make first class witnesses; they understand the gravity of the question under investigation; I have talked with every one of the number, and as before stated, they are quite willing to respond whenever called upon. I have selected them because they will know what they are

der oath, and I assume that they are practically correct. This sworn statement shows that in Kern County alone, within a year 103 persons have located 8,248 placer petroleum mining claims of twenty acres each, an average of over eighty claims of 1,600 acres to the person, or a total of 164,960 acres.

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talking about when put upon the witness stand, or in any other manner that it is possible the Government wishes to call upon them. I want to say right here that I might have extended this list to 100 if necessary. The list that I present represents expert miners, bankers, merchants, professional gentlemen, and hardy miners.

I have written and revised several reports to forward the Hon. Commissioner in the matter now under consideration; so manifold have been the changes that have occurred of grave import, since entering upon this investigation, that one after the other have been cast aside in consequence of their inferiority; this, I forward as a preliminary; the interests that are involved require long and faithful study; I am doing the best that I know how; I will send in a special report recommending the immediate suspension of *all* filings that have been made under the Act of June 9, 1897; also all homestead entries that have been made, since March 1, 1899. I of course refer to such as has been made within the bounds of the suspended lands; there is not one of them that will stand fire, after a report has been perfected on form 4-480.

I wish it were possible for me to properly impress upon the Hon. Commissioner the vast importance of the matter under consideration; it cannot be overestimated; should the lands under investigation be restored at this time, scrippers and would be homesteaders would soon cover all the territory involved in the suspension. It is idle to talk of these lands from an agricultural standpoint; a sheep could not

exist on 1000 acres of it, and it would be quite impossible for a homesteader to make a living on 50,000 acres, provided he depended on the surface of the soil from which to make it.

I will forward the remaining papers relating to this matter at the very earliest day; I am quite sure, within five days.

Very respectfully,

Jay Cummings.

Special Agent, G. L. O.

—————oOo—————

(Endorsement on Back)

1901 - 29536.19

Encl 3

U. S. General Land Office,

Received Jul 21 1900

B 20

96787

124

[3192]

Jay Cummings,

Bakersfield, Cal.

July 14th, 1900.

- - - - -

Makes preliminary report in the matter of letter "P"., W. E. V., December 19, 1899, directing that certain lands located in the Los Angeles, and Visalia Land District, California, be examined and reported upon as to the allegation that they were oil lands (mineral).

- - - - -

Ackd July 21, 1900

May 23, 1902 Refd to N

H. H. J.

Asst. Chief R

N Valk. [3193]

(Plaintiff's Exhibit 12-X - L.L.'')

(Rubber stamp) Nov. 6 1913 Nov. 6 1913

In reply please refer to Visalia 02710 "N" HHH

1X

(In pencil) W.J.H.

(In pencil) DEPARTMENT OF THE INTERIOR

H.H.H.

GENERAL LAND OFFICE

WASHINGTON

Nov. 1, 1913.

Address only the

Commissioner of the General Land Office.

Information.

Register and Receiver,

Visalia, California.

Sirs:

Referring to the protest of Guy Louthain, et al. v. F. T. Munzer, involving mineral application 02710, you are advised that I have forwarded the transcript in this case to Muskogee, Oklahoma, where, I am informed, Mrs. A. H. Southard is now employed, in the Union Indian Agency, for certification by her. Forward all papers in this case, including exhibits, which may be filed in your office, by special letter.

Please report also whether or not the protestants were specially advised of the withdrawal of this ap-

plication, and furnished you their written consent to such action.

Very respectfully,
(Signed) C. M. Bruce,
Assistant Commissioner.

[3194]

4-051

SERIAL NO. 04010 NAME ADDRESS KIND

Frank G. Munzer, Charles F. Haberkern, S. DATE
P. Wible, H. I. Tupman, W. E. Richardson,
W. H. McKittrick, Frances Stark Packard
individually and as guardian for Paul Stark
Packard, Alice Rice individually and as exe-
cutrix for Frank S. Rice—by Frank G.
Munzer, Atty-in-fact—Bakersfield, Cal.

DESCRIPTION OF LAND SW $\frac{1}{4}$
SECTION 24 TOWNSHIP 30 RANGE 23,
AREA 160

Fullers No. 20 placer mining claim.

DATE.	NOTATIONS.
March 6 '13	Application presented. Re- ceipt No 1120600
“ 24 '13	Form 4-024b, issued, dupli- cate & 1 copy sent G.L.O.
May 17 “	Adverse claim 04132 filed.
June 14 “	C.F.D. requests Final Cert. be withheld.
“ 30 “	Cert. of posting in office pre- pared. No final papers filed. Payment not made.

Papers sent G.L.O. with
June 1913 returns.

July 9 " Aff's publication and contin-
uous posting filed.

Aug. 14 " Aff's. sent G.L.O.

Plaintiff's)

Exhibit)

12-Y-L.L.)

10422

Mineral

NOTATIONS.

U. S. Land Office,
Visalia, California.

December 13, 1913.

I hereby certify the foregoing to be a full, true and correct copy of the notations on the Serial Number Register in this office, relating to mineral application No. 04010.

(Ink hand wtiting) Geo. W. Stewart,

Register.

[3195]

PLAINTIFF'S EXHIBIT 12-Z/. 4-051.

KIND: Mineral Name ADDRESS

Frank G. Munzer, Chas. F. Haberkern, S. DATE
P. Wible, H. I. Tupman, W. E. Richardson,
W. H. McKittrick, Frances Stark Packard
individually and as Guardian of Paul Stark
Packard, Alice Rice individually and as ex-
ecutrix of Frank S. Rice, by Frank G. Mun-
zer, Attorney-in-fact, Bakersfield, Cal.

DESCRIPTION OF LAND LOTS 2, 3,
4, 5, 6, 7, 10, 11, 12, 13, S $\frac{1}{2}$ of NW $\frac{1}{4}$ SEC-
TION 24 TOWNSHIP 30 RANGE 23
AREA 478.02

Fullers Consolidated placer mining claim;
including:—

Fullers No. 17, 18 and 19 (respectively)
placer mining claims.)

DATE.	NOTATIONS.
Mar. 6 '13	Application presented, Re- ceipt No. 1120601.
“ 24 13	Form 4-024b, issued, dupli- cate & 1 copy sent G.L.O.
June 14 '13	C.F.D. requests Final Cert. be withheld
“ 30 '13	Cert. of posting in office pre- pared. No final papers filed. Payment not made. Papers sent G.L.O. with June, 1913 returns.
July 9 “	All final papers filed.
Aug. 8 “	Payment made. Receipt No. 1120998.
14 “	Final papers sent G.L.O.
Sept. 11 “	Protest 716 filed. Protest 718 filed. SERIAL NO. 04011

NOTATIONS.

U. S. Land Office,
Visalia, California.

December 13, 1913.

I hereby certify the foregoing to be a full, true, and correct copy of the notations on the Serial Number Register, in this office, relating to mineral application No. 04011.

(Ink hand writing) Geo. W. Stewart.

Register.
6-1267

[3196]

4-051.

PLAINTIFF'S EXHIBIT 13-A.

SERIAL NO.	04132	NAME	ADDRESS	KIND
-	-	-	-	-
				DATE

W. S. Lierly, G. L. Blosser, Mrs. H. J. Dover, Margaret E. Dover, Executrix of last will and testament of J. M. Dover, deceased; S. A. Quinby, W. A. McNeil, F. N. Kaufman and J. W. Kay, by W. S. Lierly, Agent and Attorney-in-fact, Bakersfield, Cal.

Address.

Edmund Tauszky, Atty. No. 702 Sharon Bldg. San Francisco, Cal.

DESCRIPTION OF LAND SW 1/4
SECTION 24 TOWNSHIP 30 RANGE 23
AREA 160

(Elk Claim Placer Mining claim.)

- - - - -

DATE.	NOTATIONS.
May 17 '13	Adverse claim presented against Mineral Application 04010. Receipt No. 1120826 issued. Notice by R.M. on form 4-363 to Frank G. Munzer and Edmund Tauszky. Notice to G.L.O. on form 4-024a.
	10427
	Adverse claim.

- - - - -

NOTATIONS.

U. S. Land Office,
Visalia, California.
December 13, 1913.

I hereby certify the foregoing to be a full, true and correct copy of the notations on the Serial Number Register, in this office, relating to mineral adverse claim No. 04132.

(Ink hand writing) Geo. W. Stewart.
Register.
6-1267

[3197]

PLAINTIFF'S EXHIBIT 13-B.	4-051
SERIAL NO. 02916	NAME ADDRESS KIND

The Eight Oil Company by S. P. Wible Atty- DATE
infact.

Bakersfield, Calif. July 31 '11

DESCRIPTION OF LAND ALL OF

SECTION 30 TOWNSHIP 30 RANGE 24

AREA 644.48

May 7 '12

Fullers' Second Cons. P. M. Claim.

July 17 '13

- - - - -

DATE

NOTATION.

" 18 "

Jan. 6-11 Application presented. Receipt No. 678572 issued. Notice issued for publication in Maricopa Oil News. Copy posted in office. Copy proof expenditures sent C.F.D.

Feb. 9-11 Protest No. 358 filed.

" " " " 359 "

Mar 20 " C.F.D. reports no protest.

" 29 11 Papers sent G.L.O. with May, 1911, returns.

June 9 " " Wrote G.L.O. in re above.

Mar 31 " C.F.D. files protest against allowance of proof.

Jan 30 " Protest sent G.L.O.

10428

Mineral

NOTATIONS.

Protest sent G.L.O.

At 11.39 A.M., Amendment to protest filed by Jno. D. Cage, per. his attys. E. E. Farnsworth and C. G. Lamberson.

"FS" of July 11, 1913, refers to wire of May 25, and called for return of appn. papers.

Wrote G.L.O. papers not in our custody.

U. S. Land Office, Visalia, California/

I hereby certify the above and foregoing to be a full, true and correct copy of the notations on the Serial Number Register, in this office, relating to mineral application No. 02916.

(Ink hand writing) Geo. W. Stewart,

Register.

6-1267

[3198]

TESTIMONY OMITTED. During the trial appellants raised the issue of whether petroleum is a mineral, contending that neither within the meaning of the Act of Congress of July 27, 1866, and the Joint Resolutions of June 28, 1870 nor within the meaning of any Act of Congress or any recognized or established meaning is it such; and much testimony upon said issue was introduced both by appellants and appellee which is not made a part of this statement of the evidence on appeal for the reason that in the interval between the introduction of such testimony and the submission of the case the Supreme Court of the United States handed down its decision in the case of Edmund Burke vs. Southern Pacific Railroad Co., 234 U. S. 669, holding that petroleum is a mineral, and thus making such testimony immaterial.

[3199]

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NINTH CIRCUIT
SOUTHERN DISTRICT OF CALIFOR-
NIA NORTHERN DIVISION

THE UNITED STATES OF)
AMERICA,)
Plaintiff,)
-vs-) AFFIDAVIT
THE SOUTHERN PACIFIC)
COMPANY, a corporation,)
et al,)
Defendants,)
STATE OF CALIFORNIA)
: ss:
COUNTY OF LOS ANGELES)

Francis P. Harrington, being duly sworn, deposes and says: That the foregoing condensed statement of evidence to be printed upon appeal in the above-entitled action, consisting of three (3) volumes, and a total number of 3199 pages, has been prepared and transcribed by affiant from the original record in said cause, and from proposed condensed statements of both parties to the cause, in accordance with the order of the court herein made by Judge Bean, and in accordance with the supplemental stipulation of the parties in this cause, on file herein, and contains together with the exhibits, evidence and documents stipulated by the parties to be transmitted upon appeal without being printed, a full, true and complete statement of the evidence upon appeal, in accordance

with said order of court and the stipulations of the parties.

Subscribed and sworn to Francis P. Harrington
before me this 27th day - - - - -
of January, 1917.

(SEAL) ANTHONY E. PRIVATO
Notary Public in and for the County
of Los Angeles, State of California. [3200]

*IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NINTH CIRCUIT
SOUTHERN DISTRICT OF CALIFOR-
NIA NORTHERN DIVISION.*

UNITED STATES OF)
AMERICA,)
Plaintiff,)
vs.)
THE SOUTHERN PA-)
CIFIC COMPANY,)
a Corporation,)
THE SOUTHERN PA-)
CIFIC RAILROAD)
COMPANY, a)
Corporation,)
HOMER S. KING, Trustee,)
JAMES K. WILSON,)
Trustee,)
THE CENTRAL TRUST)
COMPANY OF NEW)
YORK, a Corporation,)

THE EQUITABLE TRUST)
COMPANY OF NEW)
YORK, a Corporation,)
THE KERN TRADING &)
OIL COMPANY, a)
Corporation,)
Defendants.)

PETITION FOR AND ORDER ALLOWING
APPEAL.

To the Judges of said District Court.

The Southern Pacific Company, The Southern Pacific Railroad Company, Homer S. King, Trustee, James K. Wilson Trustee, The Central Trust Company of New York, The Equitable Trust Company of New York and the Kern Trading and Oil Company, each and all feeling aggrieved by the final decree filed and entered in the above entitled cause on the ninth day of August A. D. 1915 do hereby jointly and severally appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and they file herewith their assignment of errors asserted and intended to be urged upon appeal and they pray [3201] that their appeal may be allowed, and they present herewith a good and sufficient bond for costs and damages and they pray that said bond may be approved by the court, and that pending said appeal all proceedings in this cause may be stayed, and they further pray that it may be ordered by the court that in preparing the transcript of the record upon appeal that all maps and exhibits

introduced in evidence by either or all parties may be bound in volumes and transmitted by the clerk as original documents as a part of the record upon appeal without being transcribed.

GUY V. SHOUP

JOSEPH H CALL

CHARLES R. LEWERS

Solicitors for said defendants.

JOSEPH H CALL

Of Counsel for said Defendants.

J. W. McKINLEY

Solicitor for the Equitable Trust Co.

The foregoing petition for appeal is hereby allowed upon bond being given as required by law in the sum of \$10000- and upon approval of said bond the same to act as a supersedeas and as a bond for costs and damages, upon appeal, and it is further ordered that in preparing the transcript of the record upon appeal that all maps and exhibits introduced in evidence by either or all parties may be bound in volumes and transmitted by the clerk as original documents as a part of the record upon appeal without being transcribed.

Dated this January 29th 1916.

ERSKINE M. ROSS

Circuit Judge and Judge of the
United States Circuit Court of Ap-
peals for the Ninth Circuit. [3202]

(Endorsed :) Orig. No. 221 In the District Court of
the United States For the Ninth Circuit Southern
District of California Northern Division United

States, Plaintiff, vs. Southern Pacific Company, et al Defendants Petition for and Order Allowing Appeal Guy V. Shoup Charles R. Lewers, Joseph H. Call, Of Solicitors for Defendants. Filed Jan 29 1916 Wm. M. Van Dyke, Clerk By Chas. N. Williams Deputy Clerk. [3203]

No. 221

*IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NINTH CIRCUIT
SOUTHERN DISTRICT OF CALI-
FORNIA NORTHERN DIVISION.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC
COMPANY, a Corporation, THE
SOUTHERN PACIFIC RAIL-
ROAD COMPANY, a Corpor-
ation, HOMER S. KING, Trus-
tee, JAMES K. WILSON, Trus-
tee, THE CENTRAL TRUST
COMPANY OF NEW YORK,
a Corporation, THE EQUITA-
BLE TRUST COMPANY OF
NEW YORK, a Corporation,
THE KERN TRADING & OIL
COMPANY, a Corporation.

ASSIGNMENT OF ERRORS

The above named defendants Southern Pacific

Company, Southern Pacific Railroad Company, Homer S. King Trustee, James K. Wilson Trustee, The Central Trust Company of New York, The Equitable Trust Company of New York and The Kern Trading and Oil Company, having appealed from the final decree in said cause, filed and entered on the ninth day of August, 1915 do now jointly and severally file this, their Assignment of Errors, in connection with their petition for said appeal, which errors, and each of them, are asserted [3204] and intended to be urged upon appeal.

I

That said United States District Court for the Southern District of California, Northern Division, erred in adjudging and determining that the United States did not prior to issuing patent for said lands on December twelve, 1904, investigate and ascertain the true character of said lands as to their being mineral or non-mineral.

II

That said court erred in adjudging and determining that the United States did not on and prior to date of said patent have and possess equal knowledge with the Southern Pacific Railroad Company, and other defendants herein, and of the public generally, as to the true character of said lands, as to their being mineral or non-mineral.

III

That said court erred in adjudging and determining that the Southern Pacific Railroad Company, de-

fendant herein, or any other persons, knew at or prior to the date of issuance of patent to said lands that said lands, or any of them, contained valuable mineral deposits or were known to be mineral lands.

IV.

That said court erred in adjudging and determining that the Southern Pacific Railroad Company, defendant herein, or any one acting by its authority, falsely or fraudulently represented to the United States prior to issuance of said patent that said lands were not known to contain valuable mineral deposits, and that they were not known mineral lands.

V

That said court erred in adjudging and determining that [3205] the United States in the issuance of said patent relied upon, or had any right to rely upon, any statement, affidavit or representation of said Southern Pacific Railroad Company, or of its officers or agents, or that the United States was induced by any statement, or representation made by said Company, or of its officers or agents, to issue said patent to said lands, or any of said lands.

VI.

That said Court erred in adjudging and determining that it can be ascertained and determined from geological conditions and examination upon the surface of the ground that any tract of land contains valuable deposits of asphaltum or mineral oil.

VII.

That said court erred in adjudging and determin-

ing that it can be established and proven from geological conditions and superficial examinations without drilling wells, that such land contains asphaltum or petroleum in quantities sufficient to make said land valuable for those deposits, or of such quality as to make such land valuable for such deposits, or that such deposits can be found at a depth such as to make said land valuable for such deposits.

VIII.

That said court erred in adjudging and determining that any statement, affidavit or representation made by said Southern Pacific Railroad Company, or by any one acting on its behalf, at or prior to the issuance of said patent, as to the mineral or non-mineral character of said lands, or any of them, was false or untrue. [3206]

IX.

That said court erred in adjudging and determining that the Southern Pacific Railroad Company, or any person acting by its authority, at or prior to the date of said patent, made any statement or representation of fact to the plaintiff, as to the non-mineral character of said lands, or any of them, or did otherwise than express opinions as to the character of said lands, made in good faith and based upon a superficial examination of said lands without borings, excavation or examinations under ground.

X.

That said court erred in adjudging and determining that said patent to said lands, dated December

twelve, 1904, was not regular and valid determination by the United States, that said lands were subject to be selected as indemnity by the Southern Pacific Railroad Company under its grant of July twenty-seventh, 1866, and that said lands were not, by said patent, determined to be non-mineral lands, and of the character of lands that said Company was entitled to select as indemnity.

XI.

That said court erred in adjudging and determining that the patent of the United States to said lands, or any of them, be cancelled, annulled or vacated.

WHEREFORE, said appellants jointly and severally pray that said decree may be reversed, and that said District Court be ordered to reverse said decree and dismiss the bill of complaint herein. [3207]

GUY V. SHOUP

CHARLES R. LEWERS

JOSEPH H. CALL

Solicitors and Attorneys for said
Defendants Appellants herein.

Service of the foregoing Assignment of Errors and accompanying Petition for Appeal admitted this _____ day of _____ 1916.

(Endorsed:) Orig. No. 221 In the District Court of the United States For the Ninth Circuit Southern District of California Northern Division. United States, Plaintiff, vs. Southern Pacific Company, et al. Assignment of Errors Guy V. Shoup Charles R. Lewers, Joseph H. Call, Of Solicitors for Defend-

ants. Filed Jan 29 1916 Wm. M. Van Dyke, Clerk
By Chas. N. Williams, Deputy Clerk [3208]

No. 221.

*IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NINTH CIRCUIT
SOUTHERN DISTRICT OF CALI-
FORNIA, NORTHERN DIVISION.*

UNITED STATES OF)
 AMERICA,)
 Plaintiff,)
 v.)
(Seal))
THESOUTHERNPACIFIC)
 COMPANY, a Corporation,)
THESOUTHERNPACIFIC)
 RAILROAD COMPANY, a)
 corporation,)
HOMER S. KING, Trustee,)
JAMES K. WILSON,)
 Trustee,)
THE CENTRAL TRUST)
 COMPANY OF NEW)
 YORK, a corporation,)
THE EQUITABLE TRUST)
 COMPANY OF NEW)
 YORK, a corporation,)
THE KERN TRADING)
 AND OIL COMPANY,)
 a corporation,)
 Defendants.)

BOND ON APPEAL.

(Seal)

KNOW ALL MEN BY THESE PRESENTS:
That we, The Southern Pacific Company, a corporation The Southern Pacific Railroad Company, a corporation, Homer S. King, individually and as trustee, James K. Wilson, individually and as trustee, The Central Trust Company of New York, a corporation
(Seal)

ation, The Equitable Trust Company of New York, a corporation, and the Kern Trading and Oil Company (of California) a corporation, as principals, and United States Fidelity and Guaranty Company, a corporation, [3209] duly organized and empowered to do business, and doing business in the State of California, as surety, are held and firmly bound unto the United States of America, complainant in the above entitled action in the sum of Ten Thousand Dollars (\$10,000.00), lawful money of the United States of America, to be paid to the said United States of America, its attorneys, officers or assigns, and for the payment of which sum, well and truly to be made, we bind ourselves, and each of us, and our and each of our successors, associates, heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

(Seal)

SEALED with our seals and dated this 27th day of January, 1916.

WHEREAS the said defendants in the above entitled cause have prosecuted or are about to prosecute

an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and decree rendered and entered in the above entitled cause in favor of the United States of America, the said complainant, and against the said defendants, on the ninth day of August, 1915, which said judgment and decree is hereby referred to and adopted as part hereof;

NOW, THEREFORE, the condition of this obligation is such that if said defendants in the above entitled cause shall prosecute their said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

SOUTHERN PACIFIC COMPANY

By W R Scott

(Seal)

Vice President

G S King

Assistant Secretary

[3210]

SOUTHERN PACIFIC COMPANY

By Charles R. Lewers

Joseph H Call

Guy V Shoup

Its Solicitors

(Seal)

SOUTHERN PACIFIC RAILROAD
COMPANY

(Seal) By W R Scott
Second Vice-President
G S King
Secretary.

SOUTHERN PACIFIC RAILROAD
COMPANY

By Charles R. Lewers
Joseph H Call
Guy V Shoup
Its Solicitors

HOMER S. KING

Individually and as Trustee,
By Charles R. Lewers
Solicitor

JAMES K. WILSON

Individually and as Trustee,
By Charles R. Lewers
Solicitor

THE CENTRAL TRUST COMPANY
OF NEW YORK

(Seal)

By Charles R. Lewers
Solicitor [3211]

THE EQUITABLE TRUST COM-
PANY OF NEW YORK

By J. W. McKinley
Solicitor

KERN TRADING AND OIL
COMPANY

(Seal)

By W R Scott

President

G S King

Secretary

3. And by Charles R. Lewers

Joseph H. Call

Guy V. Shoup

Solicitors

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By Frank M. Kelsey

its Attorney in Fact

(Seal)

The foregoing bond upon appeal is hereby approved and the same shall operate as a supersedeas.

Dated this 29th day of January 1916.

ERSKINE M. ROSS

Circuit Judge and Judge of the United
States Circuit Court of Appeals for
Ninth Circuit. [3212]

(Endorsed:) No. 221 In the District Court of the
United States, Southern District of California.
Northern Division. United States of America Plain-
tiff, vs. The Southern Pacific Company, et al. De-
fendants. Bond on Appeal.

Guy V. Shoup Charles R. Lewers Joseph H. Call
Attorneys for Defendants. 828 Flood Building San
Francisco, Cal.

Filed Jan 29 1916 Wm. M. Van Dyke, Clerk By
Chas. N. Williams, Deputy Clerk. [3213]

No. 221

*IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NINTH CIRCUIT
SOUTHERN DISTRICT OF CALIFOR-
NIA NORTHERN DIVISION*

UNITED STATES OF)
 AMERICA,)
 Plaintiff.)

vs.

THE SOUTHERN PACIFIC)
 COMPANY, a Corpor-)
 ation,)

THE SOUTHERN PACIFIC)
 RAILROAD COMPANY,)
 a Corporation,)

HOMER S. KING, Trustee,)
JAMES K. WILSON,)
 Trustee,)

THE CENTRAL TRUST)
 COMPANY OF NEW)
 YORK, a Corporation,)

THE EQUITABLE TRUST)
 COMPANY OF NEW)
 YORK, a Corporation,)

THE KERN TRADING &)
 OIL COMPANY, a Cor-)
 poration,)

Defendants.)

PRAECIPE

To the Clerk of the District Court of the United States, Ninth Circuit, Southern District of California, Northern Division.

The Defendants in the above entitled cause, Southern Pacific Company, Southern Pacific Railroad Company, Homer S. King, Trustee, James K. Wilson, Trustee, The Central Trust Company of New York, The Equitable Trust Company of New York [3214] and the Kern Trading and Oil Company, having been allowed an appeal to the United States Circuit Court of Appeals, Ninth Circuit, from the final decree entered in said cause, do now in pursuance of their appeal hereby designate and indicate the portions of the record in said cause to be incorporated into the transcript on such appeal, omitting from each paper the formal parts.

1. Bill of Complaint with any amendments thereto.
2. Answer of defendants, other than Equitable Trust Company.
3. Answer of Equitable Trust Company.
4. Order of Court to transfer cause from Honorable Olin Wellborn to be heard by Honorable Robert S. Bean at Los Angeles.
5. Opinion of Bean, District Judge, on final hearing.
6. Final Decree, filed and entered August nine, 1915.
7. Defendants and Appellants Petition for Appeal and Order allowing same.

8. Defendants and Appellants Assignment of Errors on Appeal.
9. Defendants and Appellants Bond on Appeal and order approving same.
10. Citation on Appeal to Circuit Court of Appeals and return of service thereof.
11. All *precipes* to clerk designating parts of record to be transcribed and all notices to adverse parties of filing same.
12. All orders of court enlarging time to take testimony to either, or both parties. [3215]
13. All orders of court enlarging time of parties to prepare and file condensed statement of evidence, or amendments thereto.
14. Condensed Statement of Evidence to be transcribed hereunto attached and made a part of this *precipe* marked "Exhibit A".

CHARLES R. LEWERS

JOSEPH H. CALL

Solicitors and Attorneys for
said Defendants and Appellants.

(Endorsed:) (Orig) CC No. 221 In the District Court of the United States For the Ninth Circuit Southern District of California Northern Division United States, Plaintiff, vs. Southern Pacific Company, et al Defendants. *Precipe* Guy V. Shoup Charles R. Lewers Joseph H. Call, Of Solicitors for Defendants. Received copy hereof. Feby. 9, 1916 Albert Schoonover U. S. Atty By Clyde R. Moody Asst. U. S. Atty.

Filed Feb 9 1916 Wm.M. Van Dyke, Clerk By R S Zimmerman, Deputy Clerk [3216] JB.